

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Analysis of Utilities, Inc.'s financial accounting and customer service computer system.

DOCKET NO. 120161-WS  
ORDER NO. PSC-14-0143-PCO-WS  
ISSUED: March 28, 2014

ORDER GRANTING IN PART AND DENYING IN PART  
MOTION TO COMPEL DISCOVERY

On May 24, 2012, Utilities, Inc. (UI), on behalf of its Florida subsidiaries, petitioned for the establishment of a generic docket to address the impact of divested systems on the recovery of the cost of UI's financial accounting and customer service computer system (Petition). The Petition was based on an approved Joint Stipulation and Settlement Agreement between the Office of Public Counsel (OPC) and Utilities Inc. of Eagle Ridge in Docket No. 110153-SU (Eagle Ridge).<sup>1</sup> The Petition requested a generic docket be established to "address the impact of divested systems on the Project Phoenix costs."

Pursuant to the Petition, UI and OPC agreed to a 120-day investigatory period for OPC to obtain information in a good faith effort to resolve or narrow all disputed issues. Several orders were issued extending the investigatory period, at the joint request of the parties, based upon OPC's representation that it was diligently involved in requesting and obtaining information on its defined issues from UI.<sup>2</sup> Ultimately the investigatory period lasted from May 24, 2012, through October 31, 2013. During this 17-month investigatory period, OPC issued a total of 2 requests for information and documents, for a total of 55 requests, not including subparts. At no time during this extended investigatory period did OPC aver that UI was not providing responses to its data requests.

By Order PSC-13-0408-PCO-WS, the parties were ordered to file a list of all issues no later than October 14, 2013. On October 15, 2013, OPC identified 10 issues and UI identified one issue. On November 8, 2013, the Parties filed a Joint Motion Requesting Commission Approval of Stipulation and Settlement Agreement (Settlement Agreement) resolving 9 issues, dropping one issue, and identifying one remaining issue, which was approved by Order No. PSC-14-0044-FOF-WS, issued January 22, 2014. The Order Establishing Procedure (OEP), Order No. PSC-14-0041-PCO-WS, issued on January 16, 2014, cited the one remaining issue:

Should any adjustment be made to the Utility's Project Phoenix Financial Customer Care Billing System (Phoenix Project)?

On January 28, 2014, OPC served upon UI its First Set of Interrogatories (1-15), containing 20 subparts, and its First Request for Production of Documents (1-5). UI objected to

<sup>1</sup> See Order No. PSC-12-0346-FOF-SU, issued July 5, 2012, in Docket No. 110153-SU, In re: Application for increase in wastewater rates in Lee County by Utilities, Inc. of Eagle Ridge.

<sup>2</sup> See Order Nos. PSC-12-0604-PCO-WS, issued November 6, 2012, PSC-13-0097-PCO-WS, issued February 21, 2013, PSC-13-0202-PCO-WS, issued May 17, 2013, PSC-13-0408-PCO-WS, issued August 30, 2013, in the instant docket.

request for production numbers 1-5 and interrogatories number 1, 2, 3b, 4b, 5-9 and 11-15. On or about March 4 and 5, 2014, OPC filed a Motion to Compel (Motion), Request for Oral Argument and Contingent Motion to Extend the Time to File Testimony. Oral argument was held, pursuant to notice, on March 13, 2014.

### OPC's Motion to Compel

In support of its discovery requests, OPC listed seven additional issues<sup>3</sup> in its Motion, four of which relate to the prudence of the Phoenix Project as a whole dating back to 2008 (issues 1a, 1b, 1e, and 1f).<sup>4</sup> OPC argues in its Motion that in the Eagle Ridge Settlement and Stipulation, the parties agreed that OPC could bring up any other issues in the instant docket and therefore UI's objections violate the terms of the Eagle Ridge Settlement and Stipulation. At oral argument, OPC distributed a document which described additional Phoenix Project issues from the Eagle Ridge issue identification process. OPC argued that the issues listed in the Motion are the issues agreed to be raised in this docket pursuant to the Eagle Ridge Settlement and Stipulation and are thus subsumed in the sole remaining issue. OPC asserted that the propounded discovery relates to a broad interpretation of the sole remaining issue identified by the parties in this "generic" docket. OPC further asserted in its Motion that the discovery requests are designed to elicit responses relevant to the upcoming evidentiary hearing on the listed issues.

### UI's Response

In its response, UI argues that OPC's propounded discovery is overly-broad under the terms of the Eagle Ridge Settlement and Stipulation. UI asserts that the explicit terms of the Eagle Ridge Settlement and Stipulation refer back to the issues raised in OPC's protest in that docket. UI lists the issues raised by OPC in its protest and argues that these issues relate only to the rate base reductions made as a result of the divestiture of some systems. UI argues that the discovery seeks information that is irrelevant. UI asserts that the Commission has approved the recovery of Phoenix Project's costs in about 20 rate cases, and that the prudence and reasonableness of the costs associated with operation and maintenance ongoing expenditures are best addressed in individual rate cases. UI further argues that parts of the propounded discovery relate to record-keeping issues that were previously settled. At oral argument, UI argued that it prepared and filed its testimony without knowledge of the additional issues raised by OPC.

### Analysis

Based on a review of OPC's protest in the Eagle Ridge docket, the provisions of the Eagle Ridge Settlement and Stipulation, and the documents distributed at oral argument, it is apparent that the issues listed in the Motion regarding the prudence of the Phoenix Project were not specifically identified in the Eagle Ridge docket. As stated above, the parties were ordered to file their list of issues by October 14, 2013, in the instant docket. The lists of issues filed on

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<sup>3</sup> The Motion states that the listed issues would be subject to "fine tuning."

<sup>4</sup> Issue 1g relates to an issue resolved in Paragraph 3, page 3, Stipulation and Settlement Agreement; Exhibit A, page 2, Resolved Issues and Stipulations, Issue 7, pursuant to Order No. PSC-14-0044-FOF-WS.

October 14 and 15, 2013, do not include issues relating to the prudence of the Phoenix Project from its inception. The Settlement Agreement approved by the Commission in Order No. PSC-14-0044-FOF-WS recognizes the sole remaining issue identified by the parties as whether any adjustment should be made to UI's Phoenix Project. Specifically, the Order states:

In Exhibit B to the Settlement Agreement, the Parties identified the sole issue remaining for our consideration. We, thus, find the Settlement Agreement to be a reasonable resolution because it resolves or drops all but one of the issues, thus narrowing the focus of the hearing. Pursuant to the Settlement Agreement, the Parties agree that the sole remaining issue to be decided at the hearing in this docket is:

Should any adjustment be made to the Utility's Project Phoenix Financial Customer Care Billing System (Phoenix Project)?

We find the Settlement Agreement is in the public interest because it promotes administrative efficiency and streamlines the hearing process as the focus will be only on the one issue. Our long-standing practice is to encourage parties to settle contested proceedings whenever possible.<sup>5</sup> For the foregoing reasons, the Settlement Agreement shall be approved.

The OEP in this docket, issued on January 16, 2014, also recognized the sole remaining issue and affirms that the parties may raise any fallout issues as appropriate up to and including the Prehearing Conference, unless modified by the Prehearing Officer. While the parties are allowed to raise additional fallout issues up to and including the Prehearing Conference, it does not appear that the issues listed in the Motion are deemed fallout issues.

The UI petition requested a 120-day investigatory period for the purpose of sharing information "in a good faith effort resolve or narrow all the disputed issues." In the four requests for extension of the investigatory period, the parties asserted that the time was needed to continue the investigation in an attempt to narrow the issues. In the Joint Motion Requesting Commission Approval of Stipulation and Settlement Agreement, the parties asserted that they had obtained sufficient information through the investigatory period which enabled certain issues to be resolved and identified the sole remaining issue left for resolution. Yet, during oral argument, OPC admitted that the information sought in the interrogatories and the document request were not sought or discussed by and between the parties during the 17-month investigatory period. Thus, the discovery requested is also deemed untimely.

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<sup>5</sup> Order No. PSC-06-0092-AS-WU, issued February 9, 2006, in Docket No. 000694-WU, In re: Petition by Water Management Services, Inc. for limited proceeding to increase water rates in Franklin County.; Order No. PSC-05-0956-PAA-SU, issued October 7, 2005, in Docket No. 050540-SU, In re: Settlement offer for possible overearnings in Marion County by BFF Corp.; and Order No. PSC-00-0374-S-EI, issued February 22, 2000, in Docket No. 990037-EI, In re: Petition of Tampa Electric Company to close Rate Schedules IS-3 and IST-3, and approve new Rate Schedules GSLM-2 and GSLM-3.

Administrative finality

OPC argued that it is entitled to the discovery related to the issue of the reasonableness and prudence of the Phoenix Project from its inception because the Commission's orders approving the Phoenix Project's costs allocated to individual utilities did not include an examination and ruling of prudence. The contention that the Commission has not considered the issue of the prudence of the Phoenix Project is incorrect both as a matter of fact and a matter of law. Section 367.081 (3), Florida Statutes (F.S.), specifically states that in setting rates the Commission must determine the prudent cost of providing service. Dating back to 2008, the Commission has approved and considered the cost of the Phoenix Project in setting rates.

For example, Order No. PSC-10-0585-PAA-WS,<sup>6</sup> issued September 22, 2010, addressed the Phoenix Project's allocation costs regarding 6 UI systems during 2009. As part of the allocation of costs, this Order approved the total Phoenix Project costs and held that UI could not reallocate costs to surviving utilities as a result of divestiture of certain of its utilities. This Order, and the orders in all subsequent rate cases of UI's utilities, are subject to the principle of administrative finality. The principle is described in general terms in Peoples Gas v. Mason, 187 So. 2d 335, 339 (Fla. 1966), which provides that:

Orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and issues involved therein. This is, of course, the same rule that governs the finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts.

Ruling

Rule 1.280, Florida Rules of Civil Procedure allows a broad range of discovery, limited merely by relevance or privilege. In light of the above, OPC's discovery requests regarding the issue of prudence is untimely and irrelevant in this docket. Accordingly OPC's Motion is granted in part and denied in part as follows:

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<sup>6</sup> Docket No. 090462-WS, In re: Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas and Seminole Counties by Utilities Inc. of Florida.

<b>First Set of Interrogatories</b>	<b>Motion granted or denied</b>
1	Denied. Irrelevant and administrative finality attaches to the prudence of the Phoenix Project.
2 a-j	Denied. Irrelevant and administrative finality attaches to the prudence of the Phoenix Project.
2k	Granted.
3b	Granted.
4	Denied. Irrelevant and administrative finality attaches to the prudence of the Phoenix Project.
5	Denied. Irrelevant and administrative finality attaches to the prudence of the Phoenix Project.
6	Granted.
7	Denied. Irrelevant and administrative finality attaches to the prudence of the Phoenix Project.
8	Denied. Irrelevant. Information sought relate to issues settled in Final Order No. PSC-14-0044-FOF-WS.
9	Granted.
11	Denied. Irrelevant and administrative finality attaches to the prudence of the Phoenix Project.
12	Denied. Irrelevant and administrative finality attaches to the prudence of the Phoenix Project.
13	Granted, limited to cost savings in general, but irrelevant as to the issue of the prudence of the Phoenix Project.
14	Denied. Irrelevant and administrative finality attaches to the prudence of the Phoenix Project.
15	Denied. Irrelevant and administrative finality attaches to the prudence of the Phoenix Project.

<b>First Request for Production</b>	<b>Motion granted or denied</b>
1	Denied. Irrelevant and administrative finality attaches to the prudence of the Phoenix Project.
2	Denied. Irrelevant and administrative finality attaches to the prudence of the Phoenix Project.
3	Denied. Related to issues settled by the parties and approved in Final Order No. PSC-14-0044-FOF-WS.
4	Granted.
5	Granted only as to interrogatories 2k, 6, 9, and 13.

UI shall provide its responses to the foregoing discovery requests allowed herein no later than Friday, March 24, 2014.

Contingent Motion to Extend the Time to File Testimony

At oral argument, OPC stated that, regardless of the ruling on the Motion, OPC was prepared to file testimony by the date prescribed in the OEP, March 17, 2014. Thus, the Contingent Motion to Extend the Time to File Testimony is denied.

It is therefore

ORDERED that the Office of Public Counsel's Motions to Compel are granted in part and denied in part as more specifically set forth herein. Utilities, Inc. shall respond to those discovery requests no later than March 24, 2014. It is further

ORDERED that the Office of Public Counsel's Contingent Motion to Extend the Time to File Testimony is denied.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 28th day of March, 2014.



JULIE I. BROWN

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.