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June 25, 1997

Blanca S. Bayo, Director
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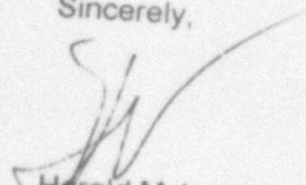
Re: Docket No. 960451-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Response to Motion for Reconsideration. A diskette in WordPerfect 6.1 is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,


Harold McLean
Associate Public Counsel

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for a rate increase) Docket No 960451-WS
in Dual, Nassau, and St. Johns)
Counties by United Water Florida, Inc)
/ Filed: June 25, 1997

CITIZENS RESPONSE TO MOTION FOR RECONSIDERATION

The Citizens of the State of Florida, by and through JACK SHREVE, Public Counsel, respond to the Motion for Reconsideration of Order No. PSC-97-0618-FOF-WS filed by United Water Florida, (UWF, or Company) on June 13, 1997 as follows:

The Citizens agree with the interpretation given to Diamond Cap Co. of Miami vs. King, 146 So2d. 889, 891 (Fla. 1962) by UWF which holds the purpose of a motion for reconsideration is to bring to the attention of the Commission some matter which it may have overlooked. The Citizens do not, however, agree with the application of that theory by UWF, which apparently holds the purpose of the motion for reconsideration is to bring to the Commission matters which were considered by the Commission, but by which it was not persuaded. In the case of Other Postretirement Employee Benefits, UWF appears to argue a position to the Commission raised in its brief, but not before.¹

With the exception of the OPEB argument raised for the first time in UWF's brief, each of the arguments raised by UWF were raised at the hearing, and considered by the Commission. Whether the Commission was persuaded by such matters--and apparently it was not--is not the proper subject for a motion for reconsideration. UWF's motion for reconsideration is an

¹ UWF tried to raise the issue at the hearing but was precluded by the Chairman's ruling on a Staff motion to strike testimony concerning this issue. (Tr. 886)

invitation for the Commission to reweigh evidence earlier and fairly presented. As for the merits of the arguments presented by UWF, the Citizens address each in turn.

Acquisition Adjustment Amortization

UWF's filing included acquisitions adjustments in rate base for six water systems and five wastewater systems. The systems were purchased during the period of 1986 through 1993, with the earliest acquisition occurring in September 1986. Through the direct testimony of Hugh Larkin, Jr., the OPC recommended that the amount of acquisition adjustment requested by UWF to be included in rate base be reduced to reflect the fact that UWF should have begun amortizing the acquisition adjustments on its books at least by the date the acquisition adjustments were recorded, which is prior to the current rate case. The Commission, in its decision, agreed that UWF should have begun amortizing the acquisition adjustments which it included in rate base in the current case prior to the current proceedings. In fact, the Commission determined that UWF should have begun amortizing the acquisition adjustments when such acquisitions were approved by the Commission, resulting in a \$623,485 reduction to combined water and wastewater rate base.

In its Motion for Reconsideration, UWF has claimed that the adjustment to reflect amortization of the acquisition adjustments is inappropriate because the Commission has not previously set an amortization period for the acquisition adjustments in question, has not set a generic amortization period or rate for acquisition adjustments, has rules prohibiting the amortization of acquisition adjustments until the Commission acts and the adjustments violate the matching principle.

The main basis of the Company's motion is that the Commission has not authorized specific amortization periods for each of the separate acquisition adjustments in question and that the 1984 NARUC USOA provides that amounts recorded in the acquisition adjustment account "with respect to each property acquisition shall be amortized, or otherwise disposed of, as the Commission may approve or direct." (UWF's Motion at page 5) The Company's Motion fails to acknowledge that the Commission has approved each of the acquisition adjustments in question. While the decisions approving the acquisition adjustments may not have delineated specific amortization periods, the Company should have been fully aware that it is the Commission's practice to require utilities to amortize acquisition adjustments and that the Commission had required amortization of previous acquisition adjustments for UWF. OPC Witness Larkin made the following statements regarding amortization of acquisition adjustments before the Commission:

...it being the Commission policy that they be amortized, that the Company has no opposition to the recording of them, that they relate to a system that is providing service to customers, and that the purchase or the payment of an acquisition adjustment is related to service as it's provided, then the reasonable thing is that it should have been amortized... (Tr. 665)

As additional support for reflecting an accumulated amortization offset to the acquisition adjustments, OPC Witness Larkin stated: "(s)imilar to the treatment of depreciation expense on plant assets, the Company should have begun amortizing the acquisition adjustments on its books the date they were recorded on the books." (Tr. 645) There is no reason to distinguish between the amortization of acquisition adjustments and the depreciation of plant assets when dealing with the date in which the amortization or depreciation should begin. Public utilities in Florida do not, and are not permitted to, delay depreciation of new plant assets until the first rate case proceeding

following the purchase/construction of the new plant. In fact, the Company did not wait until the current case to begin the depreciation of the assets it acquired in each of the systems purchased.

The amortization of acquisition adjustments must be treated accordingly for both fairness and consistency, particularly where the acquisition has been approved by the Commission.

UWF attempts to utilize the definition of amortization appearing in the NARUC Uniform System of Accounts as justification for not having begun amortization of the acquisition adjustments. The Motion quotes the definition of Amortization as follows:

the gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized. (NARUC USOA, p. 9, Definitions.)

The Company has attempted to utilize this definition by stating that UWF has not benefitted from the acquisition adjustment because the acquisition adjustment has not yet been included in rate base upon which it is allowed to earn a return. As such, UWF claims that it has "not enjoyed any related benefits as of yet..." (Motion at 8) This position is not correct and ignores the terminology of the definition.

The definition states that amortization distribute the amounts "over the life of the asset ... to which it applies, or over the period during which it is anticipated the benefit will be realized." Clearly, the life of the assets acquired by UWF in each of the acquisitions begins for UWF on the date UWF acquired the assets. UWF states several times in its Motion that it has not benefitted from the acquisition adjustments yet. This is not true. It is as of the date of the acquisition that UWF begins to receive the benefits associated with its purchase. For example, soon after the date of the acquisition, UWF began receiving revenues from the customers who were served by the

systems it acquired, thus a return would be earned on the assets acquired via the receipt of revenue from the new customers.

In theory, UWF paid more than the book value for the systems because, in its eyes, the system was worth more than the book value, and the return was higher than the book value of the system reflected. The fact that UWF paid more than the book values for the systems indicates that UWF is earning a return on those systems. (Tr. 666) Thus, UWF has, in fact, via the receipt of revenues from the acquired systems' customers, received benefits resulting from its acquisition of the systems.

The amortization of the acquisition adjustments prior to the date that the actual acquisition adjustment is included in calculated rate base does not violate the matching principle, as claimed by UWF, as the Company is receiving the benefits associated with the system acquired, including the assets and the premium it paid for those assets (acquisition adjustment) upon the purchase date.

The Company stated in its Motion for Reconsideration that the "Commission has overlooked or failed to consider certain points relating to Acquisition Adjustment Amortization..." This is not true. The Commission should not revise its decision in regards to the acquisition adjustment amortization. The Commission's decision is in compliance with the NARUC USOA, does not violate the matching principal and matches the amortization period for the acquisition adjustment with the period in which UWF receives benefits from the acquired systems. Finally, this matter was thoroughly litigated before the Commission at the hearing.

Other Postretirement Employee Benefits (OPEBs)

The Citizens support the Commission's decision regarding other postretirement employee benefits, which bases OPEB expense on the revised 1997 expense level and reduces rate base by the accumulated amount of unfunded OPEB costs. In its Motion for Reconsideration, the Company states that the Commission "has overlooked or failed to consider the purpose of Rule 25-14.012, Florida Administrative Code (FAC) and also has failed to consider the information in Exhibit No. 15 other than the annual unfunded expense amounts for 1995, 1996 and 1997, and the OPEB expenses amount for 1997..." (Page 10) Based on its claimed failure by the Commission, the Company states that the Commission should establish a regulatory asset for its 1995 and 1996 OPEB expense, establish a regulatory liability for the 1995 and 1996 unfunded OPEB liability, amortize the regulatory asset and liability over a 15 year amortization period, increase OPEB expense to reflect the amortization and reduce the rate base proportionally. Based on UWF's motion, this would result in an annual increase in OPEB expense related to the amortization of \$61,957 and a \$47,810 reduction to rate base. As part of UWF's proposal, the Commission would reduce its adjustment which offsets rate base for the accumulated amount of unfunded OPEB costs to reflect just the amount related specifically to 1997 and the \$47,810 amortization. Thus, the Company's proposal removes the majority of the 1995 and 1996 accumulated amount of unfunded OPEB costs.

The Commission's decision is consistent both with Rule 25-14.012, FAC, and with the evidence presented in this case. Furthermore, the Commission was correct in its denial of United Water Florida's attempt to change its position regarding its OPEB expense request at an

extremely late date in the proceedings (in its brief).

In its filing, at Schedule G-23, UWF requested recovery of its projected 1997 FAS 106 expense only. It did not request recovery of past OPEB costs, i.e., 1995 and 1996 costs, in its filing. The Company also did not request recovery of the past OPEB costs in its rebuttal testimony. In fact, when addressing the OPEB issue in its rebuttal testimony, the Company merely provided the following discussion:

Although the Company has not yet received rate recognition for its OPEB costs, it began funding of the liability in December 1995. The Company would therefore agree to include in rate base both the prepayment and the unfunded portion of its expense recovery. (Rebuttal Testimony of Frank J. McGuire, page 11)

Clearly, UWF did not request recovery of its 1995 and 1996 OPEB expense in rates in either its filing nor in its rebuttal testimony.

In its brief, UWF requested that it receive rate recovery of the OPEB costs it incurred in 1995 and 1996 over a 15 year amortization period. This request was denied by the Commission at page 56 of Order No. PSC-97-0618-FOF-WS. In its Motion for Reconsideration, United Water Florida states in regards to the Commission's decision on OPEB expenses and the associated reduction to rate base, that the Commission "failed to consider the information in Exhibit No. 15" in regards to the OPEB payments and expenses in 1995 and 1996 (page 10). In a following section of the Motion for Reconsideration, United Water Florida states that "(t)he Commission should reconsider its decision on OPEBs, create a regulatory asset for the 1995 and 1996 OPEB expenses, create a regulatory liability for the unfunded liability for 1995 and 1996 OPEB expenses, establish a 15 year amortization period, increase OPEB expenses, and reduce the

rate base proportionally, and adjust rates." (page 16) The Company also states that the Commission "should establish a regulatory asset for 1995 and 1996 OPEB annual expense, a regulatory liability for the 1995 and 1996 unfunded OPEB liability, and amortize them over a reasonable period..." (page 15-16)

UWF's Motion for Reconsideration fails to mention that the Company did not request any recovery of 1995 and 1996 OPEB costs until it filed its Brief. The Commission was correct in its statement in the decision that "the record of evidence does not support the utility's request for amortization of prior year expenses." (page 56) UWF should not be allowed to change its position on this issue during the briefing phase of the proceedings. Prior to that point, UWF had not requested recovery of its 1995 and 1996 OPEB costs from ratepayers. The Company, had it so desired, could have requested recovery of its 1995 and 1996 OPEB costs in its initial filing, or could possibly have updated its filing at an earlier point in the proceedings, allowing the effected parties an opportunity to adequately review, analyze and address the issue before the Commission. However, UWF failed to utilize the previous opportunities available to it. UWF's ratepayers, who are Citizens of Florida, should not be penalized via a lack of opportunity to review a significant expense item through UWF's tardy attempt to request recovery of such costs at a date beyond which the parties may adequately address the request. UWF's tardy request must be denied.

Additionally, UWF's request for approval of the creation of a regulatory asset for costs which were previously recorded on the Company's books in 1995 and 1996 is inappropriate. In fact, Rule 25-14.012(2), FAC states that "Deferral accounting under Statement of Financial Accounting No. 71 (Accounting for the Effects of Certain Types of Regulation, December 1982)

shall not be used to account for the costs of post retirement benefits other than pensions without prior Commission approval." (Emphasis added) The Company did not seek "prior Commission approval" to defer its 1995 and 1996 FAS 106 costs for future recovery. UWF states that the Commission has "failed to consider the purpose of Rule 25-14.012, FAC, in its decision on OPEB expenses and reduction to rate base" at page 10 of its Motion for Reconsideration, however, it fails to acknowledge that its tardy request is not in compliance with sub-point (2) of the same rule in that UWF did not obtain prior Commission permission to defer 1995 and 1996 OPEB costs.

In its decision, the Commission reduced rate base by the Company's entire unfunded accumulated OPEB balance, which includes unfunded amounts for 1995 and 1996. The Commission's decision is in compliance with the terminology of Rule 25-14.012(3), FAC, which states, in part, as follows:

Each utility's unfunded accumulated post-retirement benefit obligation shall be treated as a reduction to rate base in rate proceedings.

The Commission's adjustment is appropriate and in compliance with the rule. The rule does not state that the reduction to rate base is limited to the amounts that have been collected from ratepayers. The Company has taken the position that the Commission's decision to offset rate base with the accumulated unfunded OPEB costs related to 1995 and 1996 does not take into consideration the "purpose" of Rule 25-14.012(3), FAC. The Company also states that their proposal, which offsets rate base for the 1997 unfunded liability and an amortization of the 1995 and 1996 unfunded liability (assuming it is permitted to collect the 1995 and 1996 OPEB expense over a fifteen year period from ratepayers) is consistent with the "intent of the rule." (Page 14) It is the OPC's position that it is a reasonable assumption that the Commission was fully aware of

the rule and the purpose and intent of the rule when it made its decision regarding the offset to rate base. The Commission's decision does not violate the rule. The Commission's decision in regards to OPEB costs is in compliance with Rule 25-14.012, takes into consideration the evidence presented in the case and is appropriate.

Investment Tax Credits [ITCs]

The Office of Public Counsel agrees with the Commission's decision related to investment tax credit and the assignment of zero cost to that capital.

The Commission must abide by the legal requirements of the Internal Revenue Code when determining what costs to assign to investment tax credit for rate making purposes. If a utility cannot support its contention that it elected to treat investment tax credit as capital with a cost equal to the overall rate of return as required by the Internal Revenue Code then, by default, it becomes zero cost capital. United Water Florida's Motion for Reconsideration requests that the Commission ignore the fact that UWF was unable to prove that it has made the appropriate election, and asks the Commission to surmise that had United Water Florida *not* made the appropriate election, the IRS would have made the appropriate election on behalf of UWF. The Commission cannot surmise what the IRS audit did or did not do. Moreover, the Commission should not assume that the auditors actually concluded that the rate making effects of investment tax credit complied with the option elected by the Company. The only option the Commission has is to examine the evidence presented by the Company. Unfortunately for UWF, that consideration is limited to an affidavit by witness McGuire, which in effect states we think we did, we hope we did, but if we didn't we're depending on the IRS to catch us.

The Commission cannot accept this evidentiary deficiency as reason to award the

Company with an additional \$35,040 at ratepayers expense. Finally, this issue was thoroughly litigated at hearing.

Parent Debt Adjustment

In its Decision, the Commission adopted an adjustment to reflect a parent company debt adjustment based on the debt of UWF's grandparent company, United Water Resources, Inc. The adjustment resulted in a \$108,392 reduction to income tax expense. Both Commission Staff and the OPC supported this adjustment. In its Motion for Reconsideration, the Company contends that the Commission erred its application of Rule 25-14.004, which adjusts income tax expense for an interest deduction related to parent company debt, otherwise known as the parent debt adjustment.

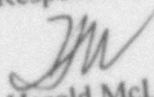
The Company's argument is essentially that Witness Frank McGuire stated that none of the United Waterworks parents' debt, that is United Water Resources' debt, was used to fund equity in either United Waterworks or United Water Florida. From this statement, the Company then claims in its motion that "the Commission has overlooked the point that there is no evidence that any debt of United Water Resources, Inc. ("United Water Resources") is invested in the equity of United Water Florida." (page 19) UWF then contends in its motion that UWF's situation meets the standard set in the General Telephone Company of Florida v. Florida Public Service Commission, 446 So.2nd 1063, 1069 (Fla. 1984), which holds that there is a rebuttable presumption to the rule. The rebuttable standard has not been met by Mr. McGuire's statement

Witness McGuire has stated that there is no evidence that debt from United Water Resources is invested directly in United Water Florida. Clearly, United Water Florida's parent, United Waterworks, is funded by United Water Resources, therefore, the flow of funds from

parent to subsidiary to subsidiary is clear. Consequently, in order for the Company to meet its rebuttable assumption, United Water Resources would have to have a capital structure that consists of 100% equity in order to meet its burden of stating that no United Water Resources debt flowed to United Water Florida through its parent, United Waterworks. If there is any debt at all in a parent company's capital structure, then that debt, as part of the capital, automatically flows from the parent to subsidiary to subsidiary via the parent company's investment in those subsidiaries. United Water Florida has not met its burden of proof in that it has not presented clear evidence demonstrating that no United Water Resources debt ultimately flows through to benefit United Water Florida operations. The Commission's adoption of the parent company debt adjustment, based on United Water Resources' debt, is appropriate. In adopting the adjustment, the Commission has not "overlooked or failed to consider certain points", as contended by UWF at page 1 of its Motion for Reconsideration. It must again be noted that there is a considerable difference between overlooking on the one hand, as contrasted with not being persuaded on the other. This matter was thoroughly litigated at hearing.

WHEREFORE, the Citizens of the State of Florida urge the Commission to deny United Water Florida's motion for reconsideration, and affirm its final order.


Respectfully submitted,



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CERTIFICATE OF SERVICE
DOCKET NO. 960451-WS

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or by hand-delivery where designated with an asterisk, to the following parties on this 25th day of June, 1997.


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