

ORIGINAL



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December 4, 2002

Blanca S. Bayo, Director  
Division of Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

RECEIVED - FPSC  
02 DEC -4 PM 3:27  
COMMISSION  
CLERK

Re: Docket No. 020071-WS

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Second Motion to Compel. A diskette in Word format 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,

Charles J. Beck  
Deputy Public Counsel

CJB:bsr

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DOCUMENT NUMBER-DATE  
13249 DEC-4 02  
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Utilities, Inc. of ) Docket no. 020071-WS  
Florida for a rate increase in Marion, Orange )  
Pasco, Pinellas and Seminole Counties ) Dated December 4, 2002  
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CITIZENS' SECOND MOTION TO COMPEL

The Citizens of Florida (Citizens), through their attorney, pursuant to Rules 28-106.204, and 28-106.205, Florida Administrative Code, seek the Florida Public Service Commission (Commission) to compel Utilities, Inc. of Florida (Utilities, Inc.) to produce the documents responsive to requests for production of documents numbered 49 through 55 contained in Citizens' fifth set of requests for production of documents dated November 19, 2002.

On November 19, 2002, Citizens served our fifth set of requests for production of documents to Utilities Inc. On or about November 27, 2002, Utilities, Inc. filed objections to requests numbered 49 through 55 of this set of discovery. Citizens received the objections from Utilities, Inc., on December 2, 2002. In this motion Citizens will set forth each request for documents, provide the objection made by Utilities, Inc., and provide our response to the objection.

Request for Documents #49: Please provide all press releases issued by Nuon and/or Utilities, Inc. which addressed the merger between the two companies.

Utilities, Inc., Objection: This request seeks press releases concerning the merger of Nuon and Utilities, Inc., the parent corporation of UIF. UIF cannot

determine the relevance or materiality in such documents nor any admissible evidence to which such documents could lead.

Citizens' Response: The requested information is relevant to this request for a general rate increase by Utilities, Inc of Florida. The merger between the parent corporation Utilities Inc. and Nuon not only potentially impacts the financial status of Utilities Inc., but it could also affect the cost structure of Utilities Inc. and its subsidiaries, including its service company, Water Service Corporation. Citizens are entitled to know the reasons for the merger and if these reasons would have an impact on the revenues, expenses, investment, and capital structure of the systems currently seeking rate relief. The reasons for a merger are generally expressed in the press releases of the combining companies. For example, if Nuon were planning an increase in its purchasing activities for the water and wastewater operations, this would affect cost allocation issues. The same type of information may be addressed in the press releases. Other items that may be addressed include layoffs or reductions in personnel that would potentially affect the test year results. Since the test year is pre merger, any cost savings are not reflected in the test year and would need to be added to the test year results.)

Request for Documents #50: Please provide all due diligence studies conducted by or for Utilities, Inc. in connection with the possible merger between Utilities, Inc. and Nuon.

Utilities, Inc., Objection: Any such documents are confidential. Further, such documents are irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence.

Citizens' Response: A claim of confidentiality cannot be used to object to producing documents. Commission rule 25-22.006 sets forth the procedure to be used by Utilities, Inc., to protect its claim of confidentiality while still producing the requested documents to Citizens.

The requested documents are relevant. They should describe both the advantages and disadvantages of the companies that are proposing to merge, including evaluations and comments on the companies' costs. This information in turn could lead to adjustments to the test year and may warrant additional investigation or analysis to determine the impact on the systems currently seeking rate relief.

Request for Documents #51: Please provide all due diligence studies conducted by or for Utilities, Inc. in connection with the possible merger between Utilities, Inc. and Suburban Utilities, Inc.

Utilities, Inc., Objection: Any such documents are confidential. Further, such documents are irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence.

Citizens' Response: A claim of confidentiality cannot be used to object to producing documents. Commission rule 25-22.006 sets forth the procedure to be

used by Utilities, Inc., to protect its claim of confidentiality while still producing the requested documents to Citizens.

With respect to the remainder of the objection, see Citizens' response with respect to request 49. At one time Utilities, Inc. was considering a merger with Suburban Utilities, Inc. This company was ultimately not chosen as the merger candidate for Utilities, Inc. The reason for this may be expressed in the due diligence studies. Other information concerning Utilities, Inc. and its "fit" with Suburban Utilities, Inc. could be discussed in the due diligence studies. To the extent that the due diligence studies address matters regarding Utilities, Inc. and its revenues and expenses and their relationship with Suburban Utilities, Inc., such information is relevant to the expenses contained in the test year.

Request for Documents #52: Please provide all due diligence studies conducted by or for Nuon in connection with the possible merger between Utilities, Inc. and Nuon.

Utilities, Inc., Objection: Any such documents are confidential. Further, such documents are irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence.

Citizens' Response: A claim of confidentiality cannot be used to object to producing documents. Commission rule 25-22.006 sets forth the procedure to be used by Utilities, Inc., to protect its claim of confidentiality while still producing the requested documents to Citizens.

With respect to the remainder of the objection, see Citizens' response with respect to request 49. In addition, the documents sought are likely to address the quality of service and the conditions of the systems of Utilities Inc. which would be relevant to the quality of service issues and used and useful issues in the instant proceeding.

Request for Documents #53: Please provide a copy of the merger agreement and all associated and related agreements between Nuon and Utilities, Inc.

Utilities, Inc., Objection: Any such documents are confidential. Further, such documents are irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence.

Citizens' Response: A claim of confidentiality cannot be used to object to producing documents. Commission rule 25-22.006 sets forth the procedure to be used by Utilities, Inc., to protect its claim of confidentiality while still producing the requested documents to Citizens.

The merger between Utilities Inc. and Nuon not only potentially impacts the financial status of Utilities Inc., but it could also affect the cost structure of Utilities Inc. and its subsidiaries, including its service company, Water Services Corporation. The Citizens are entitled to know the reasons for the merger as well as the financial structure of the merger, which would be discussed in the merger agreement. To the extent the financial structure of the merger affects the revenues, expenses,

investment or capital structure of the systems included in the instant proceeding, the information is relevant.

Request for Documents #54: Provide a copy of all four proposals submitted to Utilities, Inc. as a result of the RFP solicitation for a merger partner.

Utilities, Inc., Objection: Any such documents are confidential. Further, such documents are irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence.

Citizens' Response: A claim of confidentiality cannot be used to object to producing documents. Commission rule 25-22.006 sets forth the procedure to be used by Utilities, Inc., to protect its claim of confidentiality while still producing the requested documents to Citizens.

With respect to the remainder of the objection, see Citizens' response with respect to request 49. In addition, the responses to the RFPs will show the various options available to Utilities, Inc. and what possibilities Utilities Inc. did not select. To the extent there were better options available to Utilities Inc., this affects the reasonableness of expenses, investment, and capital structure contained in the test year.

Request for Documents #55: Provide a copy of the RFP solicitation for a merger partner for Utilities, Inc.

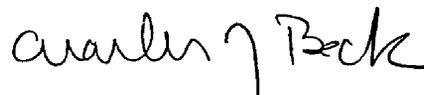
Utilities, Inc., Objection: Any such documents are confidential. Further, such documents are irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence.

Citizens' Response: A claim of confidentiality cannot be used to object to producing documents. Commission rule 25-22.006 sets forth the procedure to be used by Utilities, Inc., to protect its claim of confidentiality while still producing the requested documents to Citizens.

With respect to the remainder of the objection, see Citizens' response with respect to request 49. In addition, the RFPs will address what Utilities, Inc. was seeking when it was looking for merger candidates. The qualities of the potential candidates and the outcome of a possible merger might also be addressed in the RFP. To the extent costs savings or additional acquisition opportunities were sought, such information is relevant to the instant proceeding in that it sets the foundation for the purpose of the merger and the likely benefits of the merger.

**WHEREFORE**, the Citizens of the State of Florida respectfully move this Commission to order Utilities, Inc., to provide the documents requested by requests numbered 49 through 55 of our fifth set of requests for production of documents.

Respectfully submitted,



Charles J. Beck  
Deputy Public Counsel

Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street  
Room 812  
Tallahassee, FL 32399-1400

(850) 488-9330

Attorney for Florida's Citizens

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 020071-WS**

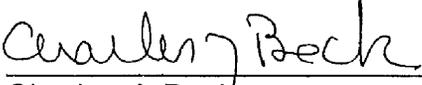
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery, facsimile and/or U.S. Mail to the following parties on this 4th day of December, 2002.

By U.S. Mail & Facsimile:

Martin S. Friedman, Esquire  
Rose, Sundstrom & Bentley, LLP  
650 S. North Lake Blvd.  
Suite 420  
Altamonte Springs, FL 32701

By Hand Delivery:

Rosanne Gervasi, Esquire  
Lorena Holley, Esquire  
Division of Legal Services  
Fla. Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

  
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Charles J. Beck  
Deputy Public Counsel