

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of Utilities, Inc.
of Florida for a rate increase in Marion,
Orange, Pasco, Pinellas and Seminole
Counties

Docket No. 020071-WS

**UTILITIES, INC. OF FLORIDA'S RESPONSE
TO CITIZEN'S SECOND MOTION TO COMPEL**

UTILITIES, INC. OF FLORIDA. (*UIF*) by and through its undersigned attorneys and responds to the Second Motion to Compel of the Citizens of the State of Florida made by and through the Office of Public Counsel (*OPC*) as follows:

1. REQUEST FOR DOCUMENTS #49 [press releases issued by Nuon and/or Utilities, Inc.]: OPC claims that these press releases will contain material information relating to the merger between Nuon and Utilities, Inc., and that such information could affect the financial status and cost structure of Utilities, Inc and its subsidiaries. UIF objects to this request because the documents requested are irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. In addition, material information which is responsive to this request, based on OPC's statements in its Motion to Compel, is more likely to be found in the file relating to the application for approval of majority organizational control filed by UIF and located at the PSC. OPC was a party to that proceeding.

2. REQUEST FOR DOCUMENTS #50 [due diligence studies conducted by or for UIF in connection with the possible merger between Nuon and UIF]: OPC claims that the information contained in them could lead to adjustments to the test year. UIF objects to this request because the documents requested are irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Further, these studies, if any exist, would contain confidential, proprietary information of Utilities, Inc., the parent company of UIF. Any such studies would have been prepared using data that was collected and already in existence at the time of preparation, well before the test year. Other information contained in these studies would consist of projections and may not accurately portray test year results or any future result. The effect of any such information on the test year would be minimal, if any, due to the length of

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time between the time the data was collected for the studies and the test year data. Further, any such studies were available to OPC at the time the Commission was evaluating the merger. OPC was a party to that proceeding. If either the Commission or OPC believed that these due diligence studies were relevant, they could have requested and had the benefit of them at that time.

3. REQUEST FOR DOCUMENTS #51 [due diligence studies conducted by or for UIF in connection with possible merger between UIF and Suburban Utilities, Inc.]: OPC claims that the information contained in them could affect the financial status or cost structure of UIF and its subsidiaries. UIF objects to this request because the documents requested are irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Further, UIF is unaware if any such documents exist. If such documents exist, they would contain confidential, proprietary information of UIF. Any such studies would have been prepared using data that was collected and already in existence at the time of preparation, well before the test year. Other information contained in them would consist of projections and may not accurately portray test year results or any future result. The effect of any such information on the test year would be minimal, if any, due to the length of time between the time the data was collected for the studies and the test year data.

4. REQUEST FOR DOCUMENTS #52 [due diligence studies conducted by or for Nuon in connection with the possible merger between Nuon and UIF]: OPC claims that the information contained in them could affect the financial status or cost structure of UIF and its subsidiaries and are likely to address the quality of service and condition of the systems of UIF. UIF objects to this request because the documents requested are irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. UIF is unaware if any such documents exist. If such documents exist, they would contain confidential, proprietary information of Nuon, which is not a party to this matter. Any such studies would have been prepared using data that was collected and already in existence at the time, well before the test year. The effect of any such information on the test year would be minimal, if any, due to the length of time between the time the data was collected for the studies and the test year data. Current and more useful information of the type sought by OPC is more likely to be available in

the Annual Report of UIF.

5. REQUEST FOR DOCUMENTS #53 [merger agreement and associated and related agreements between Nuon and UIF]: OPC claims that these documents may potentially impact the financial status and cost structure of UIF and its subsidiaries. These documents were made available to the Commission in connection with the application for approval of majority organizational control filed by UIF and located at the PSC. These documents were available to OPC at the time the Commission was evaluating the merger. OPC was a party to that proceeding.

6. REQUEST FOR DOCUMENTS #54 [proposals submitted to UIF as a result of the RFP solicitation for a merger partner]: OPC claims that these proposals will contain material information relating to the merger between Nuon and Utilities, Inc., and that such information could affect the financial status and cost structure of Utilities, Inc and its subsidiaries. UIF objects to this request because the documents requested are irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. UIF did not pursue these proposals because, on evaluation, they did not meet UIF's standards for economic and business reasons. The Directors of UIF have a fiduciary duty to pursue opportunities which are in the best interests of UIF and its shareholders, including those which are reasonably calculated to produce economic and other benefits. These other proposals were not reasonably calculated to produce the desired benefits. It would have been patently unreasonable to choose them. OPC's request is in reality a method for questioning the selection of Nuon as a merger partner. It is not within the Commission's or OPC's jurisdiction to question the business judgment of UIF or Nuon. The merger between Nuon and UIF was approved by the Commission and the merger has been completed. What benefits these other proposals presented or any other information claimed by OPC to be contained in these documents is now irrelevant.

7. REQUEST FOR DOCUMENTS #55 [RFP solicitation for merger partner for UIF]: OPC claims that these proposals will contain material information relating to the merger between Nuon and Utilities, Inc., and that such information could affect the financial status and cost structure of Utilities, Inc and its subsidiaries. In addition, OPC claims that these RFP's will

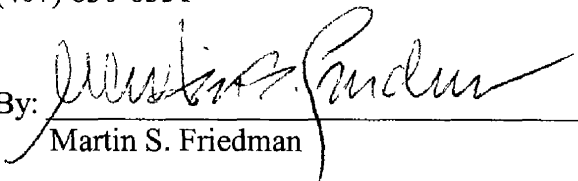
reveal the type and qualities UIF was looking for when it sought merger candidates. UIF objects to this request because these documents requested are irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Whatever qualities in potential candidates UIF was looking for at the time is now irrelevant. OPC's request is, in reality, a method for questioning the selection of Nuon as a merger partner. It is not within the Commission's or OPC's jurisdiction to question the business judgment of UIF or Nuon. The merger between Nuon and UIF was approved by the Commission and the merger has been completed. What qualities UIF was looking for in a merger partner or any other information claimed by OPC to be contained in these documents is now irrelevant.

8. This Commission may modify or restrict the scope of discovery pursuant to FAC Rule 28-106.206 and FRCP Rule 1.280(c).

WHEREFORE, UTILITIES, INC. OF FLORIDA respectfully requests the Commission deny Citizens' Second Motion to Compel and enter an order restricting the scope of discovery relating to the discovery requests of OPC in accordance with this Response.

Respectfully submitted on this
14th day of December, 2002 by:

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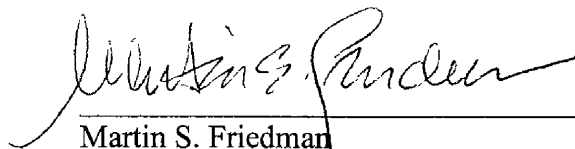
Martin S. Friedman

CERTIFICATE OF SERVICE
DOCKET NO. 020071-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing UTILITIES, INC. OF FLORIDA'S RESPONSE TO SECOND CITIZEN'S MOTION TO COMPEL has been furnished by U.S. Mail and facsimile to the following parties on this 19th day of December, 2002:

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