

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Investigation into ratemaking
consideration of gain on sale from
sales of facilities of Utilities, Inc.
of Florida to the City of Maitland
in Orange County and the City of Altamonte
Springs in Seminole County**

**Docket No. 020071-WS
Filed: February 17, 2003**

**DIRECT TESTIMONY OF
STEVEN M. LUBERTOZZI
FILED ON BEHALF
OF
UTILITIES, INC. OF FLORIDA**

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DIRECT TESTIMONY OF

STEVEN M. LUBERTOZZI

Q.: WHAT IS YOUR NAME, BUSINESS ADDRESS AND OCCUPATION?

A.: My name is Steven M. LubertoZZi. My business address is 2335 Sanders Road, Northbrook, Illinois 60062. I am the Director of Regulatory Accounting for Utilities, Inc. and its subsidiaries, including Utilities, Inc. of Florida ("UIF").

Q.: PLEASE SUMMARIZE YOUR PROFESSIONAL BACKGROUND.

A.: I graduated from Indiana University in 1990. I had four years of public accounting/financial analysis experience prior to joining Utilities, Inc. I have been employed by Utilities, Inc. since June 2001. Since that time I have been involved in many phases of ratemaking in several regulatory jurisdictions. I am a Certified Public Accountant and a member of the American Institute of Certified Public Accountants.

Q.: BRIEFLY DESCRIBE THE NATURE OF THE WORK YOU DO WITH UTILITIES, INC. OF FLORIDA.

A.: My responsibilities include the financial analysis of the subsidiaries of Utilities, Inc., preparation of applications for rate relief and other regulatory activities, facilitation of commission audits and the submission of financial testimony and schedules to support a request for an increase in rates.

Q.: WHAT IS UTILITIES, INC. OF FLORIDA?

A.: UIF was formed to provide Florida developers an alternative method for obtaining water and wastewater utility service in Florida. It is a direct subsidiary of Utilities, Inc., the largest privately owned company in this industry, operating over 400 utility systems in 17 states. UIF provides water and waste water service in approximately 22 service areas in five counties throughout the State, and it serves approximately nine thousand commercial and residential customers.

Q.: WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS DOCKET?

A.: I will (1) describe the decision-making process that led to UIF's sale of the Druid Isle water system and a portion of the Oakland Shores water system of UIF to the City of Maitland in Orange County (*Maitland Sale*), and the sale of the Green Acres Campground water and wastewater system to the City of Altamonte Springs in Seminole

1 County (*Altamonte Sale*); (2) explain that the accounting treatment was
2 consistent with Florida Public Service Commission Order No. PSC-02-
3 0657-PAA-WU, (3) describe the subsequent reinvestment or use of the
4 proceeds of those sales; and (4) explain the policy of Utilities, Inc.
5 relating to the sales of the utility property of its subsidiaries and the
6 reinvestment of proceeds of sale, generally, including the accounting
7 treatment.

8
9 **Q.: PLEASE EXPLAIN THE CIRCUMSTANCES SURROUNDING THE SALES TO**
10 **THE CITY OF ALTAMONTE SPRINGS AND THE CITY OF MAITLAND.**

11
12 **A.:** UIF was approached by the City of Altamonte Springs to determine
13 whether UIF had any interest in selling its service territory and the City
14 of Maitland to determine whether UIF had any interest in selling its
15 utility property. UIF understood that the cities each had property near
16 UIF's service territory. UIF also understood that both cities had the
17 right of condemnation, and would have condemned the properties if
18 UIF had not agreed to sell them. Although sales of its assets is not its
19 usual practice, UIF decided that, in view of the potential for
20 condemnation, the sales were in the best interests of its shareholders
21 and the ratepayers.

22
23 **Q: WHEN WAS THE PURCHASE AGREEMENT FOR THE MAITLAND SALE**
24 **ENTERED INTO WITH THE CITY OF MAITLAND?**

25
26 **A:** UIF entered into a purchase agreement in October of 1998.

27
28 **Q: WHEN DID THE TRANSACTION FINALLY CLOSE?**

29
30 **A:** The transaction with the City of Maitland closed on February 15, 1999.

31
32 **Q: WHEN WAS THE PURCHASE AGREEMENT FOR THE ALTAMONTE SALE**
33 **ENTERED INTO WITH THE CITY OF ALTAMONTE SPRINGS?**

34
35 **A:** UIF entered into this purchase agreement in August of 1999.

36
37 **Q: WHEN DID THE TRANSACTION FINALLY CLOSE?**

38
39 **A:** The transaction with the City of Altamonte Springs closed on August
40 19, 1999.

41
42 **Q: HAVE YOU REVIEWED THE BOOKS AND RECORDS OF UTILITIES, INC.**
43 **OF FLORIDA WITH RESPECT TO THE SYSTEMS IT SOLD TO THE CITY**
44 **OF MAITLAND AND THE CITY OF ALTAMONTE SPRINGS?**

45
46 **A:** Yes.

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2 **Q: WHAT WAS THE PURCHASE PRICE PAID BY THE CITY OF MAITLAND?**
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4 A: The City of Maitland paid Utilities, Inc. \$159,000.
5
6 **Q: WHAT WAS THE NET GAIN FOR UTILITIES, INC. OF FLORIDA AS A**
7 **RESULT OF THE MAITLAND SALE?**
8
9 A: The net gain was approximately \$60,000.
10
11 **Q: WHAT WAS THE PURCHASE PRICE PAID BY THE CITY OF ALTAMONTE**
12 **SPRINGS?**
13
14 A: The City of Altamonte Springs paid Utilities, Inc. \$427,000.
15
16 **Q: WHAT WAS THE NET GAIN FOR UIF AS A RESULT OF THE**
17 **ALTAMONTE SALE?**
18
19 A: The net gain was approximately \$270,000.
20
21 **Q: HOW DID UTILITIES, INC. RECORD THE PROCEEDS FROM THE SALES?**
22
23 A: The proceeds were booked to the gain on sale of utility property
24 accounts of Utilities, Inc. This is consistent with PSC Order No. 02-
25 0657-PAA-WU and the Uniform System of Accounts.
26
27 **Q.: EXPLAIN WHAT HAPPENED TO THE PROCEEDS RECEIVED BY UIF**
28 **FROM THESE TRANSACTIONS?**
29
30 A.: The proceeds from the previously mentioned transactions were
31 deposited into the depository account of Water Service Corporation
32 ("WSC"). WSC is the service company for all of Utilities, Inc.'s
33 operating subsidiaries. The sources of the funds in this depository
34 account are the operating revenues from all of WSC's operating
35 subsidiaries and other miscellaneous deposits. Deposits are made to
36 this account on a daily, weekly or monthly basis. The funds in this
37 account are used to pay expenses, payables, capital projects and other
38 expenditures incurred in the ordinary course of business. The proceeds
39 were used for general corporate purposes.
40
41 **Q: IF UIF KNEW THAT IT WOULD NOT BE PERMITTED TO RETAIN THE**
42 **ENTIRE GAIN ON THE SALE OF THE SYSTEMS TO THE CITY OF**
43 **MAITLAND OR THE CITY OF ALTAMONTE SPRINGS, WOULD IT HAVE**
44 **AFFECTED YOUR NEGOTIATIONS WITH EITHER PURCHASER?**
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46 A: Yes.

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Q: WAS UIF'S DECISION TO SELL THESE SYSTEMS INFLUENCED BY THE FLORIDA PUBLIC SERVICE COMMISSION'S PRIOR TREATMENT OF THE SALE OF OTHER SYSTEMS?

A: Yes, the issue of sharing the gain on sales of systems has been litigated in a number of rate cases. The precedent that was established has been applied consistently by the Florida Public Service Commission. The Florida Public Service Commission has established a policy of allowing shareholders to retain the gain on sales of their company's facilities.

Q.: PLEASE EXPLAIN HOW UTILITIES, INC. TREATS ANY LOSS OR GAIN ON THE SALE OF THESE SYSTEMS FOR RATEMAKING PURPOSES.

A.: Utilities, Inc. believes that gains and losses from the sale of utility property should flow to the shareholders as a return of the capital invested in the utility. The shareholders of Utilities, Inc. bear the entire risk of loss of their investment in utility property. The rate payers do not bear any of this risk. The rate payers never acquire a proprietary interest in utility property. Utilities, Inc. treats gains and losses consistent with these facts. Its position is consistent with the decisions of the Florida Public Service Commission in prior cases.

Q.: PLEASE EXPLAIN WHY UTILITIES, INC. BELIEVES THAT ANY GAIN ON THE SALE OF THE SYSTEMS SHOULD NOT BE SHARED WITH ITS REMAINING RATEPAYERS.

A.: Since the investors provide the capital and bear the risks, they are entitled to receive the return. Gains and losses on the sale of utility property are properly assigned to the owners of the facilities, just as in any other business enterprise. Utility investments are not risk-free and may bear additional risks beyond the normal, predictable risks borne by other business enterprises. There is little or no regulatory protection for the investors who lose money on the sale other disposition of their utility investments. Further, the ratepayers' use of the systems and payment for the cost of service in the form of rates do not vest any ownership interest in utility property. Therefore, because the owners have taken on the risk of the success or failure of the utility, they should be entitled to any gains received on the sale of assets.

Q.: DOES UTILITIES, INC. AGREE THAT THE REMAINING CUSTOMERS UNDER A UTILITY'S UNIFORM RATE STRUCTURE CONTRIBUTED TO A PORTION OF THE RECOVERY OF ITS INVESTMENT IN A WATER SYSTEM PRIOR TO THE TRANSFER IF THE SYSTEM? IF NOT, PLEASE EXPLAIN IN DETAIL WHY THIS IS NOT THE CASE.

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A.: No, the remaining customers, like all customers, pay rates that are based on the cost of providing service based on a specific test period. It is not possible to determine whether, over a period of time, one customer “contributed” to a portion of the other facilities that are unrelated, except by virtue of their common rate.

Q.: DOES THAT CONCLUDE YOUR TESTIMONY?

A.: Yes, it does.