

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 MOTION TO DISMISS

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

1. OPC claims that UIF has failed to meet all of the requirements of Order No. 0213 (the *Order*). It alleges that UIF has failed to supply answers to Interrogatory No. 20, and Requests for Production Nos. 5, 16, 32, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55.

2. Interrogatory No. 20 requests a listing of all legal expenses included in the test year and the preceding two years. In addition, it requests information in numerous sub-parts, for each law suit, relating to whether the lawsuit has been resolved or settled, whether or not UIF is requesting recovery of legal fees as part of its claims, the circumstances of each lawsuit, the names of the plaintiff and the defendant and an explanation of why it is appropriate to include such expenses in test year expenses. The information requested comes from a number of sources and requires careful analysis. The UIF has begun a report which will satisfy OPC but was unable to complete it before the deadline mandated by the Order. The amount sought to be included in test year expenses which is attributable to such lawsuits is \$28,239.87, or only 1.46% of the total revenue requirement for UIF, therefore will have a minimal impact on test year expenses. In addition, OPC has been aware of the total amount sought to be recovered as test year legal expense as the information was included in

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UIF's general ledger which was previously provided to OPC in response to an earlier discovery request. The information requested cannot have such a material effect on OPC's case so that its absence would cause OPC any appreciable harm in preparing its case. However, UIF will provide the requested information as soon as possible.

3. UIF provided answers to Request for Production No. 5 in its responses to Requests Nos. 32 and 33, therefore OPC cannot claim that it has been adversely affected or that UIF has failed to comply with the Order with respect to Request No. 5.

4. Request for Production No. 16 was not the subject of any of OPC's Motions to Compel or the Order, therefore cannot be used as a basis for OPC's Motion to Dismiss. Nonetheless, UIF believes that it provided answers to Request No. 16 in October, 2002, but is unable to provide this Commission with specific proof, as the information responsive to the request was sent with other responsive material in a batch. Please refer to footnote no. 1 to Citizens' Third Motion to Compel. UIF has produced it again in connection with its Supplemental Response to Citizens' First Requests for Production of Documents filed simultaneously with this Response.

5. UIF provided answers to Request for Production No. 32 in its response to Request No. 33, therefore OPC cannot claim that it has been adversely affected or that UIF has failed to comply with the Order.

6. UIF provided answers to Requests for Production Nos. 44-46 and the "first" 49 with the production of the WSC Allocation Book and from other sources. These are the only documents responsive to these Requests. Because OPC already had possession of the only documents responsive to these requests, OPC cannot claim that it has been adversely affected or that UIF has failed to comply with the Order. Further, the omission of this information was not intentional. UIF's counsel believed these responses had been filed with UIF's responses to Citizens' Sixth Set of

Interrogatories in December, 2002. UIF will provide OPC with a formal, specific response in its Responses to Citizens' Fifth Request for Production of Documents filed simultaneously with this Response.

7. There were no Requests numbered 47 or 48, therefore OPC cannot claim that it has been adversely affected or that UIF has failed to comply with the Order in respect of these Requests.

8. UIF objected to Requests Nos. 49 (Second 49) to 55 on the grounds that the information sought was irrelevant and was not likely to lead to the discovery of admissible evidence. The information OPC seeks include press releases and other material available to the general public, and due diligence studies relating to the merger between Utilities, Inc. and Nuon and due diligence studies and RFP solicitation proposals relating to possible mergers between Utilities, Inc. and other entities. The only merger that was conducted was between Utilities, Inc. and Nuon. These requests were overlooked by UIF's counsel in coordinating compliance with the Order with employees of UIF. OPC cannot claim that it has been adversely affected in the preparation of its case by the lack of this information. However, UIF will endeavor to provide such information to OPC as soon as possible.

9. The course of the discovery process in this case has been tortuous and difficult. OPC promulgated over 400 interrogatories alone (including sub-parts), many of which required complex calculations and analyses to complete correctly. Even though the number of interrogatories were greatly in excess of that allowed by Order Establishing Procedure No. PSC-02-1495-PCO-WS dated October 31, 2002, UIF did not object on that basis, but in good faith worked diligently in responding to OPC's discovery requests..

10. OPC's discovery requests were often inartfully crafted leaving UIF to guess as to exactly what it was required to provide.

11. OPC's discovery requests required UIF to provide information in a format in which it does not retain or store information, lengthening the time needed to prepare a response and increasing UIF's rate case expense. OPC has insisted on having the information in the requested format even after UIF explained that it would require additional time and resources to prepare it to OPC's specifications.

12. OPC has filed at least one of its Motions to Compel even though its legal counsel had agreed to allow UIF additional time to respond and UIF had served the information before the agreed deadline.

13. OPC is trying to convince this Commission that it is unable to prepare its case due to UIF's alleged noncompliance, when in fact, OPC has had all of the requested information it realistically requires to prepare its case.

14. OPC has erroneously stated that "In this case, certain expenses of both Utilities, Inc., and Nuon NV are ultimately allocated to customers of Utilities, Inc. of Florida and its subsidiaries." See footnote to Citizens' Sixth and Seventh Sets of Requests for Production of Documents to Utilities, Inc. This statement is untrue. Nuon has neither allocated any such expenses to UIF nor does it propose to do so. In fact, it has made a commitment not to allocate any expenses to UIF. OPC is well aware of this commitment.

15. On or about February 28, 2003, OPC served its Twelfth Set of Interrogatories and Requests for Production on UIF. UIF, in good faith, is attempting to respond to these discovery requests even though OPC had by that time far exceeded its allotted number of interrogatories and had not received any notice that OPC had approached the Commission to request a modification of that Order to serve more. See Order Establishing Procedure No. PSC-02-1495-PCO-WS dated October 31, 2002.

16. On March 7, 2003, OPC served its Thirteenth Set of Interrogatories and Requests for

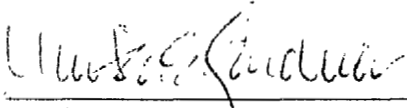
Production on UIF. UIF intends to object to the Interrogatories and move to strike them on the grounds that they are excessive and burdensome and far exceed the Order Establishing Procedure.

WHEREFORE, UIF respectfully requests that this Commission:

- A. Deny Citizens' Motion to Dismiss and for sanctions;
- B. Prohibit OPC from serving further discovery in this case; and
- C. Grant such other relief to which UIF may show itself entitled.

Respectfully submitted on this
1st day of March, 2003 by:

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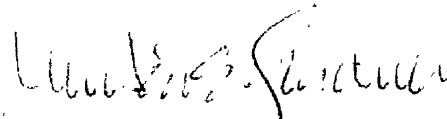
Martin S. Friedman

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 CITIZEN'S MOTION TO DISMISS has been furnished by facsimile and Federal Express to the following parties on this 13th day of March, 2003:

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