

ORIGINAL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL



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June 12, 2003

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

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RE: Docket No. 020071-WS

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of a Motion to Compel for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

H F. Mann
Associate Public Counsel

HFM/dsb
Enclosures

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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 June 12, 2003

MOTION TO COMPEL

The Citizens of the State of Florida, through their attorney, pursuant to Rules 28-106.204, and 28-106.205, Florida Administrative Code, hereby seek the Florida Public Service Commission ("the Commission") to compel Utilities, Inc. of Florida ("UIF" or "Company") to answer the specific discovery, as described herein:

1. On January 14, 2003, the Citizens propounded their tenth set of interrogatories on UIF, and their ninth set of requests for production of documents. On February 27, 2003, the Citizens propounded their twelfth set of interrogatories. UIF has failed to provide adequate response to interrogatories and request for production of documents, as described in the following paragraphs.

2. Interrogatory No. 149 requested that UIF "Please explain, in detail, the reason for Andrew Dopuch's termination, which was authorized in the May 16, 2001 Board meeting. If the reason for his termination has any impact on historic test year rate base, expenses, or revenues, identify the impact and the associated accounts."

UIF responded on January 21, 2003, that:

"The Board of Directors of UIF terminated the employment of Mr. Dopuch for business reasons. None of the costs associated with his termination, if any, were passed on to rate payers. Therefore, the information sought is not relevant to this matter and not reasonably calculated to lead to the discovery of admissible evidence.

His termination did affect historic test year rate base and expenses in that, after his termination, Mr. Dopuch's salary and costs of his benefits and other associated expenses were no longer allocated to rate payers."

The information Citizens seek in this interrogatory is relevant to this case and is reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the Company's assurance that none of the costs associated with his termination were passed on to rate payers, Citizens have the right to learn for themselves the reasons for his termination and whether those reasons may impact the rate payers - - for example, was he involved in fraud, misallocation of costs, filing false financial information, etcetera? Once Citizens learn the reasons for his termination, Citizens will know whether or not to pursue the issue further. UIF's objection of relevance is not valid and the Company should be compelled to provide a fully responsive answer to this interrogatory.

3. Interrogatory No. 170 asked UIF to:

- (a) Please identify each sale of a water or waste water system, or portion of a water or wastewater system, including customer base, that Utilities, Inc. has made in the past ten years.
- (b) Please provide the date of the sale and dollar value of each transaction identified in response to (a).
- (c) Please identify the Utilities, Inc. operating company that sold each system or portion of a system identified in (a).
- (d) Please identify the state, county, or other regulatory agency that had jurisdiction over each sale identified in (a).
- (e) Please describe the treatment of the gain (loss) on each sale identified in (a) approved by the relevant regulatory agency.

UIF responded on March 3, 2003, that:

UIF objects to this interrogatory because it purports to answers [sic] with respect to each sale of a water or wastewater system by Utilities, Inc. anywhere in the world. This information is overly broad, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Utilities, Inc., if required, will answer such interrogatory with respect to transactions occurring within the State of Florida. Further, this interrogatory purports to require information relating to transactions which occurred over the past 10 years. UIF can not reasonably be expected to either retain or produce information relating to such transactions, if any, that occurred this long ago. In addition, information of this age can have very little, if any, relevance to the issues in this case.

This information sought by Citizens is relevant to this proceeding. One of the issues in this proceeding is the treatment of the gain on sale for Druid Isle and Green Acres. Utilities, Inc. of Florida is incorrect to suggest that this information is not relevant if it concerns sales and gains involving its parent company, Utilities, Inc., rather than Utilities, Inc. of Florida, itself. Citizens have the right to know what sales have taken place in other jurisdictions and to use such information to support our case. UIF could likewise do the same. However, Citizens do not have the ready access to this information that UIF does. The Florida Public Service Commission often looks at what other state commissions have done in similar situations to help guide it in its deliberations. Furthermore, the Commission Staff conducted a survey of several states to determine how gain on sale was treated in other jurisdictions. The information requested by Citizens in Interrogatory 170 may be used to supplement the data already collected by the Commission Staff. Accordingly, the information sought is relevant.

Utilities, Inc. of Florida exclaims that this interrogatory seeks information about Utilities, Inc. systems "anywhere in the world." As such, UIF also asserts that the request is overly broad. However, Citizens' intent is to include only systems in the United States. The purpose of this requested information is to provide comparison of the sales of other systems by Utilities, Inc. with the sales of Druid Isles and Green Acres. That is, sales of system assets only and system assets, along with part of, or the system's entire, customer base. The time frame of "10 years" was included in the request to ensure that a broad representation of sales would be included in the information provided. That is, that there be provided information regarding the sale of ten or fifteen systems, or portions of systems, along with each respective customer base.

Citizens assert that the information sought in interrogatory 170 is relevant and is not overly broad, and that the Company should be compelled to provide a fully responsive answer to this interrogatory.

4. Citizens' Production of Document request No. 83 asked Utilities, Inc. of Florida to:

Provide copies of all documents associated with the termination of Andrew N. Dopuch and subsequent legal action or threatened legal action by either Mr. Dopuch and/or his counsel and the Company. This should include, but not be limited to, any lawsuits, the letter mentioned in the November 21, 2001 BOD meeting minutes, and any other documents related to such claims in the Company's possession.

Utilities, Inc. of Florida responded on January 21, 2003, that:

None of the costs attributable to the termination of Mr. Dopuch were passed on to rate payers. Therefore, the

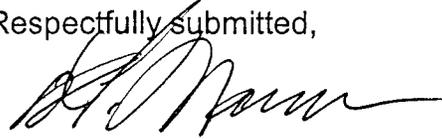
information sought is not relevant to this matter and not reasonably calculated to lead to the discovery of admissible evidence.

Notwithstanding the company's statement, the Citizens have the right to verify for itself whether any of these costs were passed on to the company's rate payers. Andrew N. Dopuch was a high-ranking employee of Utilities, Inc. His employment was terminated in 2001, and apparently there were lawsuits or threatened lawsuits by Mr. Dopuch. The Citizens seek documents which set forth the circumstances of Mr. Dopuch's termination, including documents relating to lawsuits or threatened lawsuits. It is entirely possible that the actions relating to the termination of Mr. Dopuch may impact other employees, which could potentially affect costs included in the Company's test year. Additionally, legal costs, as well as personnel costs associated with Mr. Dopuch's termination, should be identified and evaluated to determine whether these costs should be borne by ratepayers. Furthermore, to the extent that Mr. Dopuch was terminated because of illegal activities, the Citizens should have the right to discovery of this information and the extent to which it may impact test year results. Citizens note that, prior to his termination, a portion of Mr. Dopuch's salary was allocated to the company's systems from WSC - - Utilities, Inc.'s service affiliate.

These documents are relevant to this proceeding. The company should be compelled to provide all of the documents requested in POD 83.

WHEREFORE, the Citizens of the State of Florida respectfully move this Commission to compel Utilities, Inc. of Florida to provide discovery responses consistent with those enumerated herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H F. Rick Mann", written in a cursive style.

H F. Rick Mann
Associate Public Counsel

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C/o The Florida Legislature
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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 12th day of June, 2003.

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
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2540 Shumard Oak Blvd.
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H F. Mann
Associate Public Counsel