

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 COMPEL


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

1. In this Motion to Compel, the OPC seeks to compel a response to Interrogatory Nos. 149 and 170, and Request for Production of Documents No. 83.
2. Interrogatory No. 149 and Request for Production of Documents No. 83 deal with the termination of the employment of Andrew Dopuch in May 2001. Interrogatory No. 149 requested that UIF "explain, in detail, the reason for Andrew Dopuch's termination, If the reason for his termination has any impact on historic test year rate base, expenses, or revenues, please identify the impact and the associated accounts". UIF timely objected to these discovery requests as follows:

"OBJECTION: 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 the costs of his benefits and other associated expenses were no longer allocated to rate payers".

In Request for Production No. 83, OPC requested "all documents associated with the termination

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of Andrew N. Dopuch” UIF objected to this Request on substantially the same grounds. As UIF stated above, Mr. Dopuch was terminated for business reasons and his termination had a positive impact on historic test year rate base, expenses or accounts in that no portion of his salary and related benefits were allocated to rate payers. UIF has, effectively, responded to the Interrogatory. If OPC is requiring UIF to disclose whether rate payers would be bearing any part of the burden of his termination, the answer is still “No”. If OPC is trying to discover facts which legitimately affect the permissible scope of this rate case and their inquiry, they have all of the information they both need and are entitled to have. If they are trying to uncover facts which are outside the scope of this rate case and the permissible scope of their inquiry, they are choosing an improper forum for it.

3. OPC states that it has the right to determine for itself whether any of the costs relating to Mr. Dopuch’s termination were passed on to UIF’s rate payers. OPC has already obtained copies of the relevant books and records of UIF and have had ample opportunity to inspect them to discover “whether any of these costs were passed on to the company’s rate payers.” They had received a copy of the Staff Audit conducted in this case and could have, with minimal effort, confirmed that UIF’s statement that none of such costs have been passed on to rate payers is true.

4. UIF has already provided substantial evidence that none of the costs were passed on to rate payers. OPC has had this evidence since, at the latest, March of this year. Any motivation for OPC to now assert that they need UIF to provide further proof that such costs were not passed on to rate payers, is not valid and can only be deemed a fishing expedition for something that OPC either has not requested and has no evidence of, both of which are outside the scope of this rate case.

5. There is nothing further that UIF could provide that would be material or relevant to OPC’s case. To now assert that there is anything else that UIF is withholding that is both relevant and necessary to OPC, particularly on the grounds that Mr. Dopuch was guilty of some sort of

malfeasance and that UIF was covering it up, is slanderous and also outside the scope of this rate case.

6. Citizens' repeated requests for information of this type are nothing more than fishing expeditions. The information sought is irrelevant and immaterial to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. *City of Miami v. Florida Public Service Commission*, 226 So. 2d 217 (Fla. 1969).

7. Interrogatory No. 170 requested information on all sales of water and wastewater systems, including customer base, that Utilities, Inc. has made in the last 10 years. UIF properly objected to this interrogatory as being excessive in its scope when it stated:

“UIF objects to this interrogatory because it purports to answers 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.”

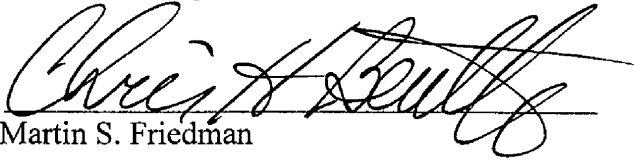
UIF offered to provide information relating to systems in Florida. Requiring it to provide this information concerning systems without geographical or time limitation is overly broad, burdensome and excessive, especially for the reason proffered: that the Commission needs this information to determine how it should treat the gain on sale issue. The Commission can determine this issue based on its own expertise in the area and does not require any guidance from other jurisdictions. There is no valid reason why OPC requires this information, particularly asserted at this late stage of the progress of this case.

8. OPC has not offered any reasonable basis for requiring the information sought in

Interrogatory Nos. 149 and 170 and Request for Production No. 83. OPC's Motion to Compel should therefore be denied and any further attempts to require information on these matters stricken.

Respectfully submitted on this
19th day of June, 2003 by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing UTILITIES, INC. OF FLORIDA'S RESPONSE TO CITIZEN'S MOTION TO COMPEL has been furnished by U.S. Mail and facsimile to the following parties on this 19th day of June, 2003:

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