



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: May 8, 2007

TO: Office of Commission Clerk

FROM: Ralph R. Jaeger, Senior Attorney, Office of the General Counsel

RE: Docket No. 060253 WS - Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities Inc., of Florida.

Please place the attached e-mail response from Tricia Merchant in the docket file.

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cc: Division of Economic Regulation (Bulecza-Banks, Kaproth, Romig, Redemann)

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Ralph Jaeger

From: MERCHANT.TRICIA [MERCHANT.TRICIA@leg.state.fl.us]
Sent: Thursday, May 03, 2007 9:35 AM
To: Christine Romig; mcooke@ps.state.fl.us; Ralph Jaeger; Cheryl Bulecza-Banks; Mary Anne Helton; Marshall Willis; John Slemkewicz
Cc: REILLY.STEVE
Subject: RE: ORANGE COUNTY PRECEDENT- SETTING CASE

Here are some very good cases to find detailed discussions on the Commission's practice. First look at the UIF last rate case order. That case is chock full of testimony that addresses both condemnations or sale of total systems along with customers as well as the secondary issue of sales of asset/facilities without customers. Also, the current UIF staff recommendation recognizes that gains on sales of assets should be amortized above the line. The SSU order also covers the issue of gains on sale or condemnation of systems and distinguishes the case by the same witness Gower used by both UIF and SSU of the sale of utility assets formerly used and useful. In the Mad Hatter case, which is addressed in the UIF order, the Commission also shared the gain on the subsequent sale of land that was used for wastewater disposal. The reason that the land became available for sale was based on DEP's determination that the holding ponds were inadequate to accept effluent, not a condemnation by a governmental agency.

Last UIF Rate Case Order page 121, Order No. PSC-03-1440-FOF-WS, issued 12/22/03 in Docket No. 020071-WS, starting at p 117. Most of this discussion deals with gains on sale of systems along with customers. But UIF's own witness addresses the different types of gains on sales of assets and what the Commission has done in past decisions starting on page 127 of the order:

"Witness Gower indicated that, in each plant abandonment case cited by witness Dismukes, she had ignored the Commission's finding of prudence. Specifically, he asserted that witness Dismukes ignored the developments subsequent to the 1991 Mad Hatter case (Order PSC-93-0295-FOF-WS, issued February 24, 1993, in Docket No. 910637-WS In Re: Application for rate Increase in Pasco County by Mad Hatter Utility, Inc.), to which she cited. In that case, this Commission allowed recovery of the loss on two wastewater plants and the related land. Witness Gower noted that Mad Hatter had indicated that, for a number of reasons, the land could not be sold and should be included in the loss. The Commission later discovered that Mad Hatter had sold the land to an affiliated officer. By Order No. PSC-97-1233-AS-WS issued October 13, 1997, in Docket No. 961471-WS, In Re: Initiation of Show Cause Proceedings Against Mad Hatter Utility, Inc. in Pasco County for Violation of Order No. PSC-93-0295-FOF-WS, the Commission required Mad Hatter to refund to its ratepayers both the loss recovered from the customers and the gain on sale of the land. Based on these subsequent events, witness Gower asserted that Witness Dismukes' claim that customers are consistently required to bear loss on abandonments is not well founded. On cross-examination, witness Dismukes agreed that shareholders bear the loss of imprudent abandonments.

With regard to witness Dismukes' citations to several electric cases in which the Commission attributed gains to ratepayers, witness Gower stated that the gains were associated with specific assets, rather than the sale of facilities, service territory, and the customers. He noted that as a consequence of a sale of facilities in the water and wastewater industry, a utility ceases to serve a portion of its territory and experiences a decline in revenue. In contrast, witness Gower pointed out that, in the electric cases, the specific asset sales did not result in loss of revenues or customers."

There is also the last SSU rate case 950495 Final Order No. PSC-96-1320-FOF-WS, issued 10/30/96 starting at p 201. There again is a big discussion about the issues surrounding condemnations and why the commission should not recognize the gains incurred. See 1st full paragraph on page 200. The 1st full paragraph on page 201 addresses gains on sale of assets without customers.

During cross-examination, Mr. Gower stated that ratepayers should only pay a rate of return on property that is in service. Mr. Gower's testimony was contrary to Rule 25-30.433(9), Florida Administrative Code, which allows a utility to recover the cost of forced abandonments or prudent retirements from the customers. Similarly, when a utility sells property that was

formerly used and useful or included in uniform rates, the ratepayers should receive the benefit of the gain on the sale of such utility property. This is the case with the \$33,726 gain on the sale of the River Park facilities, as it was included in the uniform rates originally approved in Docket No. 920199-WS. With regard to the 6.11 acres in the Spring Hill service area, the record was unclear as to whether the property was used and useful. Had it not been used and useful, the utility should have provided such evidence. The gain realized on that property was \$201,950. Therefore, we find the gain for the River Park facilities to be \$33,726 and the Spring Hill land to be \$201,950. This total of \$235,675 shall be amortized above the line over five years, resulting in a yearly deduction to expenses of \$41,135.

I don't have the cites for the electric cases that are mentioned but those cases are for sales of utility assets. I also believe that there are some gains on sale of telephone assets that have been shared with customers (Dale Mailhot would be the best person to ask about that).

From: Christine Romig [mailto:CRomig@PSC.STATE.FL.US]
Sent: Wednesday, May 02, 2007 10:03 AM
To: MERCHANT.TRICIA
Subject: FW: ORANGE COUNTY PRECEDENT- SETTING CASE
Importance: High

Sorry -- sent this to you "old" address.

From: Christine Romig
Sent: Wednesday, May 02, 2007 10:00 AM
To: 'Tricia Merchant'; 'REILLY.STEVE'
Cc: Cheryl Bulecza-Banks; Mary Anne Helton; Michael Cooke; John Slemkewicz
Subject: ORANGE COUNTY PRECEDENT- SETTING CASE

Tricia and Steve,

If you receive the same request from others and have already responded, just let me know, please, so I can track down the responses.

I understand that Tim Devlin mentioned an Orange Co. case that seemed to have spurred the legislative language in question. Are you familiar with this case? Legal and technical staff would like to review that case before tomorrow, if at all possible. Also, I believe Steve Reilly said there was precedent and that he would provide Michael Cooke with copies. Michael Cooke has asked us to follow up on this --

Thanks.