

Ruth Nettles

From: Michele Parks [michele@RSBattorneys.com]
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To: Filings@psc.state.fl.us
Cc: Jean Hartman; Charles Beck
Subject: Docket No. 080006-WS
Attachments: Response.10-06-2008.pdf

- a. Martin S. Friedman, Esquire
Rose, Sundstrom & Bentley, LLP
2180 W. State Road 434, Suite 2118
Longwood, FL 32779
PHONE: (407) 830-6331
FAX: (407) 830-8522
mfriedman@rsbattorneys.com
- b. Docket No. 080006-WS; Water and Wastewater Industry Annual Reestablishment of Authorized Range of Return on Common Equity for Water and Wastewater Utilities pursuant to Section 367.081 (4) (f), F.S.
- c. Utilities, Inc.
- d. 3 pages
- e. Response to Motion to Strike Portions of Rebuttal Testimony of Pauline Ahern

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FPSC-COMMISSION CLERK

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Water and Wastewater Industry)
Annual Reestablishment of Authorized)
Range of Return on Common Equity for)
Water and Wastewater Utilities pursuant)
to Section 367.081 (4)(f), F.S.)
_____)

Docket No.: 080006-WS

RESPONSE TO MOTION TO STRIKE PORTIONS OF
REBUTTAL TESTIMONY OF PAULINE AHERN

UTILITIES, INC., by and through its undersigned attorneys, files this Response to Public Counsel's Motion to Strike Portions of the Rebuttal Testimony of Pauline Ahern and to Strike Exhibits PMA-13 and PMA-22.

Public Counsel's witness went beyond the boundaries of evidentiary propriety in testifying about and proposing an Exhibit of its witness' rebuttal testimony in an electric power case in Canada. The stated purpose of that testimony and Exhibit "is to show that Dr. Morin is not an impartial, unbiased evaluator of matters related to finance and that his analysis in this area has been rejected by another regulatory agency." Notably, Utilities, Inc., did not seek to strike the Public Counsel's witness' Surrebuttal Testimony (p. 35, lines 19-20) asserting that Dr. Morin testified on behalf of utility companies in hundreds of cases. There is nothing inappropriate about that testimony any more than it would be inappropriate to point out that Public Counsel's witness "worked for various state utility commissions, attorney generals, utility customers and public advocates." (Direct Testimony of James A. Rothschild, p. 2, lines 1-3). While chastising Dr. Morin's evaluations of financial matters as not impartial and unbiased, he paints himself with that same brush.

The inappropriate testimony and exhibit proposed by Public Counsel's witness should be contrasted with the testimony of Ms. Ahern which Public Counsel seeks to strike. It is as

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if Public Counsel believes that if its witness cannot talk about Dr Morin, Utilities, Inc.'s witness should not be able to either. Public Counsel's witness could have critiqued the portions of Dr. Morin's testimony referenced by Ms. Ahern. He chose not to do so directly, but proposed an exhibit consisting of rebuttal testimony he filed to Dr. Morin's testimony in an electric power case in Canada. Such a process is inappropriate and such testimony and exhibit are irrelevant to the instant proceeding.

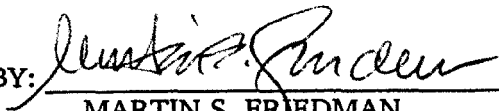
Ms. Ahern's reference to Dr. Morin's treatises are pursuant to the Evidence Code, specifically Section 90.704, Florida Statutes, in that such treatises are the kind of data that financial experts reasonably rely in forming their opinions. Carratelli v. State, 832 So. 2d 850 (Fla. 4th DCA 2002). Public Counsel's witness utilizes similar data, even proposing as an Exhibit (JAR-6) an excerpt from Wikipedia.

It is up to Public Counsel on cross-examination to point out what it perceives to be flaws in the data upon which Ms. Ahern relies, but it is not improper for her to disclose such in her prefiled testimony.

WHEREFORE, Utilities, Inc., requests the Prehearing Officer deny Public Counsel's Motion to Strike certain testimony and exhibit of Ms. Ahern.

Respectfully submitted this 6th day of
October, 2008, by:

Rose, Sundstrom & Bentley, LLP
2180 W. State Road 434, Suite 2118
Longwood, FL 32779
PHONE: (407) 830-6331


BY: 
MARTIN S. FRIEDMAN
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail & U. S. Mail this 6th day of October, 2008, to:

Jean Hartman, Esquire
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Charlie Beck, Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-5458

BY: 
MARTIN S. FRIEDMAN