

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Analysis of Utilities, Inc.'s financial accounting
and customer service computer system.

Docket No: 120161-WS
Filed: May 30, 2014

**CITIZENS' POST-HEARING STATEMENT OF POSITIONS
AND POST-HEARING BRIEF**

The Citizens of the State of Florida, through the Office of Public Counsel (Citizens or OPC), pursuant to the Order Establishing Procedure, Order No. PSC-14-0041-PCO-WS, issued January 16, 2014, and Prehearing Order PSC-14-0207-PHO-WS, issued May 6, 2014, hereby submit this Post-Hearing Statement of Positions and Post-Hearing Brief on the issues. In support thereof state:

PRELIMINARY STATEMENT

Utilities, Inc. (Utility or UI) has failed to satisfy its burden of proof with regards to Issues 1 and 2. Prior to closing this Generic Docket, the Commission should implement certain measures to ensure present and future compliance by UI with the Generic Docket Settlement approved by the Commission in January.

STATEMENT OF BASIC POSITION

The Commission must address a threshold legal issue: whether the issue in dispute “Should any adjustment be made to the Utility's Project Phoenix Financial Customer Care Billing System (Phoenix Project)?” is barred by application of the principle of administrative finality. If it is, then the Commission should affirm its prior decisions and disallow rate case expense requested in this proceeding as being unreasonably incurred.

OPC supports the staff recommended and Commission approved adjustments to Project Phoenix. For many years, these adjustments have properly accounted for the effect of voluntary divestitures of ERCs by UI. OPC maintains the Commission's long standing adjustment to Project Phoenix costs, which accounts for the divestiture of ERCs, is just and reasonable, and fairly and equitably balances the interests of the remaining customers and the utility. See Section 367.081(2)(a)1, F.S. Thus, it would be unjust and unreasonable for UI to reallocate the divested systems' share of Project Phoenix costs to remaining systems.

Rate case expense should be evaluated for reasonableness. For the reasons stated under Issue 2 below, a substantial amount of requested rate case expense is unreasonable and should be disallowed, and much of the remaining amount is insufficiently supported and significant reductions should be made. The amortization period for rate case expense should start following the issuance of the final order in this docket.

POSITIONS AND ARGUMENT ON DISPUTED ISSUES

ISSUE 1: Should any adjustment be made to the Utility's Project Phoenix Financial Customer Care Billing System (Phoenix Project)?

*** No. This issue is barred by the principle of administrative finality. The Commission has already decided this issue in numerous final orders, and should continue making its Project Phoenix adjustments which properly account for the effect of divestitures by UI of its systems and ERCs. The Commission adjustments are just and reasonable, and fairly and equitably balance the interests of the customers and the utility has failed to meet its burden that the Commission's adjustment is improper or unreasonable. ***

ARGUMENT

Legal issue – Administrative Finality

As a legal threshold issue, the Commission should determine that Issue 1 is barred by application of the principle of administrative finality. *See Peoples Gas v. Mason*, 187 So. 2d

335, 339 (Fla. 1966); *see also Fla. Power Corp. v. Garcia*, 780 So. 2d 34 (Fla. 2001). OPC submits that the Commission has previously decided this issue in many prior proposed agency action (PAA) rate cases which UI accepted by declining to protest. *See* Exh. 9a, SBF-1a. This exhibit shows all the orders where this adjustment was previously made by the Commission. Thus, the principle of administrative finality attaches to the Commission's Project Phoenix adjustment. In addition, those unprotested Project Phoenix allocations prior to Eagle Ridge protest cannot be revisited without violating the principle of retroactive ratemaking.

Factual Issue

While the issue was framed as "Should any adjustment be made to the Utility's Project Phoenix Financial Customer Care Billing System (Phoenix Project)?", the Commission is actually deciding how the Project Phoenix costs should be allocated to the remaining Florida systems on an ERC basis, and whether those adjustments should continue to account for UI's divestiture of systems. The Commission's practice of reducing the cost of the Project Phoenix rate base components should be continued in accord with the Commission's prior decisions regarding adjustments to Project Phoenix in Order No. PSC-10-0400-PAA-WS, Order No. PSC-10-0407-PAA-SU, Order No. PSC-10-0423-PAA-WS, Order No. PSC-10-0585-PAA-WS, Order No. PSC-10-0682-PAA-WS, Order No. PSC-11-0015-PAA-WS, and Order No. PSC-11-0514-PAA-WS. These final decisions determined the allocation of Project Phoenix costs, the appropriate methodology to address the divestiture of UI subsidiaries, and the proper amortization period for Project Phoenix.

There have been no changes of circumstances since these prior orders became final which would require or authorize the Commission to revisit or adjust its prior Project Phoenix divestiture adjustment methodology. After a certain period of time, the Commission loses

control of the order, and administrative finality attaches. *See Reedy Creek Utils. Co. v. Fla. Public Serv. Com*, 418 So. 2d 249, 254 (Fla. 1982). “ ‘ . . . [O]rders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification.’ ” *Id.* (quoting *Peoples Gas v. Mason.*). However, “[t]he Commission is charged with the statutory duty of regulating and supervising public utilities with respect to their rates. When the Commission determined that it had *erred to the detriment of the using public*, it had the inherent power and the statutory duty to amend its order *to protect the customer.*” *Id.* (emphasis added). In the instant case, if the Commission erred, it was of no detriment to the using public.

Moreover, the Commission’s rationale for and method of making a cost allocation adjustment to a parent company’s computer system as a result of system divestitures has been previously litigated through a full evidentiary hearing. *See* Order No. PSC-12-0102-FOF-WS, issued March 5, 2012, in Docket No. 100330-WS, in the Aqua Utilities of Florida (AUF) rate case, at 113. In that order, the Commission determined:

that the allocation of corporate software costs from the parent company to its subsidiaries should be based on equivalent residential connections (ERCs). However, if subsidiaries are sold, the cost previously allocated to the subsidiaries should not be re-allocated to the surviving utilities because *no added benefit was realized by the remaining subsidiaries.*

Id. at 113. (emphasis added). The Commission further stated: “[t]he rationale for this adjustment is that customers receive no additional benefit from this investment.” *Id.* at 113 (emphasis added). In reaching its decision, the Commission relied upon Order No. PSC-10-0585-PAA-WS, issued September 22, 2010, in Docket No. 090462-WS, In re: Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas and Seminole Counties by Utilities, Inc. of Florida. *Id.* at 113. In the AUF order, the Commission noted, in

passing, that UI had protested the Commission's rationale for making this type of adjustment in the Eagle Ridge Docket No. 110153-SU; however, the Commission also noted that its rationale for making this adjustment had also become a final order.¹

Accordingly, the Commission's stated basis for making its adjustment to Project Phoenix costs has become final, not only in a multitude of unprotested PAA Orders for UI systems, but also in the AUF Final Order. For these reasons, the Commission should continue adjusting Project Phoenix consistent with the Orders cited above. The lack of credible testimony from any Utility witness that the remaining UI customers received any additional benefit resulting from the divestiture of systems bolsters the Commission's adherence to this firmly embedded policy.

OPC supports the staff recommended and Commission approved adjustments to Project Phoenix. These adjustments properly account for the effect of divestitures of ERCs by UI. As testified by Staff Witness Fletcher, reallocating the divested systems' share of Project Phoenix costs to remaining systems is not just or reasonable. TR 87. Through no fault of their own, customers should not be required to pay more for Project Phoenix as a result of divestitures. The customers in the remaining systems receive no added benefit from bearing additional allocated Project Phoenix costs. TR 87. OPC maintains these adjustments to Project Phoenix costs are just and reasonable, and fairly and equitably balance the interests of the customers and the utility. *See* Section 367.081(2)(a)1, F.S.

Failure to satisfy its burden of proof

UI's testimony and exhibits also failed to satisfy UI's burden of proof to demonstrate why the Commission's Project Phoenix adjustment should be modified or discontinued. The

¹ PAA Orders become Final Orders upon issuance of a Consummation Order if no party protests within the protest period.

testimony of UI Witness Danielson is not relevant to the issue of the Commission's adjustment to Project Phoenix costs to account for the divestiture of systems.

Deloitte Consulting LLP (Deloitte) was initially retained by UI in late March 2012 to develop and provide testimony in the Eagle Ridge Docket No. 110153-SU. See Exh. 7, SW-1. This engagement pre-dates the opening of the Generic Docket and explains why the testimony of Deloitte consultant Witness Danielson's testimony fails to provide any basis for the Commission to depart from its divestiture adjustment. Instead, his direct testimony addressed the design, sizing, and cost of Project Phoenix which is directed at supporting UI's claims for the prudence of Project Phoenix from its inception. OPC attempted to raise the prudence of the design, sizing, and overall cost of Project Phoenix in this docket; however, pursuant to Order No. PSC-14-0143-PCO-WS, issued March 28, 2014 (March Order), the prudence of the Project Phoenix from its inception is not an issue in this case. March Order at 2-3. Thus, Witness Danielson's testimony fails to provide any justification for the Commission to recede from its established Project Phoenix adjustment policy. On rebuttal, UI Witness Hoy merely disagrees with Staff Witness Fletcher, and his testimony also does not provide any basis for the Commission to retreat from its Project Phoenix adjustment policy.

The Negotiated Sale Price Includes Project Phoenix Cost Consideration

OPC believes that the sales price for a divested system includes consideration for the future depreciation expense for that system's portion of Project Phoenix at the time it was sold. During Commissioner questioning, UI Witness Hoy testified when negotiating the appropriate sales price of a system, UI takes into consideration future lost revenues resulting from the sale of that system. TR 156. He testified that Project Phoenix customer care and billing system assets

are not sold with a system (TR 157) but that a portion of Project Phoenix costs would be included in those lost revenues. TR 156-157.

It is axiomatic that included in the divested system's revenue requirements are costs (including depreciation expenses) allocated to that system for Project Phoenix. Even if the Project Phoenix customer care and billing system assets were not sold with the system, the Utility has the ability to negotiate a sales price which allows the company an opportunity to recoup some, or all, of the future costs, including that system's remaining undepreciated portion of Project Phoenix depreciation expenses allocated to that particular system. When it divests itself of one of its systems, it is within the Utility's control to ensure that it is made whole for that system through its negotiated sales price. Since the sales price for a divested system includes consideration for lost revenues (which includes consideration for future costs and the remaining undepreciated portion of Project Phoenix expenses associated with the divested system), re-allocating Project Phoenix costs to the remaining UI customers could give UI a double recovery.

Witness Fletcher testified that the Commission's Project Phoenix adjustment does not take into consideration whether there is a gain-on-sale. TR 100. The Commission has previously and correctly determined that the remaining customers receive no additional benefit for paying more for Project Phoenix. TR 88. Thus, the Utility's "gain-on-sale" argument is irrelevant to the Commission's Project Phoenix adjustment because the remaining customers receive no additional benefit and should not have to bear any additional costs. Therefore, the Commission should continue making adjustments to Project Phoenix consistent with its previous decisions. In addition, OPC supports the 10-year amortization period for Project Phoenix.

Conclusion

In summary, OPC supports Staff's recommended, and the Commission's previously approved adjustments, to Project Phoenix to account for the divestitures of systems and associated reduction in ERCs. The Company has failed to provide any evidence that customers receive any additional benefit by paying an increased share of the remaining undepreciated Project Phoenix costs or that UI is deprived of the opportunity to recover its Project Phoenix costs. For the remaining customers to pay more for no additional benefit is unjust and unreasonable, and provides UI with an opportunity to double recover undepreciated Project Phoenix costs.

The Commission should determine that its Project Phoenix adjustment satisfies the requirements of Section 367.081(2)(a)1, F.S., to "fix rates which are just, reasonable, compensatory, and not unfairly discriminatory." The Commission should also determine that the Commission's Project Phoenix adjustment properly accounts for the effect of the divestitures, balances the interests of the customers and the utility, and is in the public interest.

ISSUE 2: What is the appropriate rate case expense?

*** The revised requested \$237,642 rate case expense is excessive and should be reduced by at least \$175,000. It is the Utility's burden to show that its rate case expense is reasonable, prudent, and sufficiently supported. The Utility has failed to meet its burden for the majority of its requested costs. ***

ARGUMENT

Adjustments to Actual & Estimated Rate Case Expense

UI requested \$166,658 in actual rate case expense in this docket, plus an additional \$70,984 estimate to complete the case, for a grand total of \$237,634 of actual and estimated rate case expense. See Exhibit 21, Revised Exhibit SW-3, page A of 31, attached to deposition of

Witness Wiorek. OPC submits the one disputed issue in this proceeding is barred by the principle of administrative finality; therefore, the Commission should disallow all rate case expense. In the event the Commission determines the issue in this matter is not barred by administrative finality, then the actual and estimated rate case should be substantially reduced as excessive, unreasonably incurred, or unsupported.

The utility has the burden to prove that all of its requested rate case expense is reasonable in pursuing its case before the Commission. *See* Section 367.081(7), Florida Statutes. If the utility does not carry its burden of proof of reasonableness, rate case expense must be disallowed. The reasonableness of rate case expense is a question of fact and law which the Commission must determine. “[T]he Commission enjoys a broad discretion with respect to allowance of rate case expense. . . an automatic award of rate case expense. . . without reference to the prudence of the costs incurred in the rate case proceedings, clearly would constitute an abuse of discretion. . . .” *Meadowbrook Utility Systems, Inc. v. Florida Public Service Com.*, 518 So. 2d 326, 327 (Fla. 1st DCA 1987) (citation omitted). If the Commission determines that rate case expense is not reasonable or prudent, then it must be disallowed. Any doubt as to whether rate case expense is adequately supported by the record or whether rate case expense was reasonably incurred, including whether the utility meet its burden of proof, should be resolved in favor of the customers, and rate case expense reduced or disallowed accordingly.

As will be reflected below, the Commission should find that the documentary and testimonial evidence in this proceeding do not adequately support the requested level of rate case expense. The Commission should conclude as a matter of law that UI failed to satisfy its burden of proof for its requested level of rate case expense.

Actual & Estimated for Deloitte Consulting LLP (Deloitte)

As a preamble to analyzing the reasonableness of the actual and estimated amount of rate case expense associated with Deloitte is whether the cost incurred to prepare the Deloitte testimony was related to a relevant issue in dispute in this docket. OPC asserts it was unreasonable for UI to retain Deloitte to develop testimony regarding the prudence of Project Phoenix which was not at issue when the testimony was filed on February 14, 2014. Testimony supporting the Utility's position opposing the Commission's Project Phoenix adjustment could easily have been provided by UI management, such as Witness Hoy, the former Chief Operating Officer (COO) of UI, who provided rebuttal testimony. Since Witness Danielson's testimony and all of Deloitte's rate case expense was incurred to bolster the prudence of Project Phoenix, which is a non-issue in this docket and not a disputed issue, the entire amount of actual and estimated rate case expense from Deloitte should be completely disallowed as unreasonably incurred.

UI's rate case expense for Deloitte charges lacks reasonable support or justification.

On September 27, 2012, Deloitte billed UI \$61,824 for expert witness services. See Exh. 8, SW-2, page 3 of 26; TR 55-57. Page 4 of Exhibit 8 reflects a document entitled "Utilities, Inc. Litigation Support – Deloitte Services Breakdown", which shows that Deloitte personnel charged 106 hours to UI during May and June 2012. The explanations for services provided are: "information gathering and research," "analysis," "document development," and documentation review and update." Page 2 of Exhibit 8 contains a statement of the actual and estimated charges for Deloitte professional services as of the date that UI's direct testimony was filed. That page matches the dollar amount for the 2012 Deloitte charges; however, it delineates 111.6 (not 106)

hours of billed services with completely different explanations than those provided on page 4 of the same exhibit. In Staff Interrogatory 5c² (Exhibit 12), UI was asked to provide a more detailed explanation of 56 hours related to documentation development and documentation review and update. UI stated in response to Staff Interrogatory 5c:

The 32 hours dedicated for document development include the tracking down of information and assist in preparation of Prefiled Testimony, which includes research and analysis. The additional 24 hours involve following up with related parties, tracking down additional supporting documentation and updating the initial documents to support and document necessary changes and updates.

The sparse explanations and non-matching hours provided by UI in an attempt to provide support for the services charged are vague and confusing at best. Furthermore, this lack of specificity is consistent with the mismatch between the nature of the testimony (prudence of Project Phoenix) and the issue in this case nearly two year later (the Commission's Project Phoenix adjustment). It appears that a consultant spent 32 hours to track down documents and assist in preparing testimony; however, most of the remaining hours spent for gathering information, research, following up with related parties and updating original documents are unexplained as to how those activities relate to this docket and are reasonable costs to be borne by the ratepayers with respect to the one disputed issue. The fact that the explanations on pages 2 and 4 of Exhibit 8, as well as the response to Interrogatory 5c in Exhibit 12, are so different in the hours charged and work performed clearly shows that the support is inadequate to show reasonableness. Thus, UI has failed to satisfy its burden of proof that these expenses were reasonably incurred especially with respect to the issue in dispute. Based on UI's failure to meet its burden, the entire amount of rate expense for Deloitte should be disallowed. OPC submits

² OPC objected to the admission of Exhibit 12, containing UI responses to Staff Interrogatory 5a-5d. OPC maintains it is the Utility's burden of proof to show the reasonableness of rate case expense and that these interrogatory responses were admitted into the record by Staff over OPC's objection. Notwithstanding OPC's reference to this interrogatory, OPC maintains its objection to its admission.

that that, at best, only 32 hours spent tracking down information and assisting in the preparation of prefiled testimony may have been sufficiently documented if the Commission considers allowing any amount of rate case expense for Deloitte. Without further justification or explanation why these 106 or 111.6 hours³ of services are reasonable, the entire amount of \$61,824 should be disallowed.

Analysis of rate case expense billed by Deloitte to UI prior to January 31, 2014

According to the testimony of Witness Danielson, the “Deloitte Invoice” dated September 27, 2012, was for developing his pre-filed testimony. TR 55-57, 60-61; Exh. 8, SW-2, page 3 of 26, Deloitte Consulting LLP invoice (hereinafter “Deloitte Invoice”). According to the dates on the “Deloitte Services Breakdown” (see Exh. 8, SW-2, page 4 of 26), it appears the work invoiced to UI on September 27, 2012 was for services most likely performed in May and June 2012 for UI.⁴ This was well before the OEP in this docket was issued, crystalizing the issue to be litigated at the May 14, 2014 hearing. As previously discussed in Issue 1, Witness Danielson’s testimony was developed to bolster support for the prudence of the design, sizing, and cost of Project Phoenix, and had little if any relevance related to the Commission’s divestiture adjustment being litigated. Because it was not reasonable for Deloitte to pre-draft

³ Assuming that UI’s scant justification for its charges satisfies the burden of proof, the majority of the hours invoiced to UI by Deloitte were not performed in support of this Generic Docket. For example, Deloitte’s billing started on May 14, 2012 and ended on June 1, 2012; however, UI did not petition to open the Generic Docket until May 24, 2012. From May 14 to May 24, 2012, Deloitte billed UI for 64 hours, and from May 25 to June 1, 2012, Deloitte billed another 42 hours. Thus, at least 64 hours is associated with some other UI matter, not the Generic Docket, and should be disallowed. Additionally, there is no evidence that the remaining 42 hours was specifically incurred for the Generic Docket, therefore, those hours should also be disallowed.

⁴ Nothing on the “Deloitte Services Breakdown” document indicates it was specifically related to this Generic Docket. Inferring from his testimony on cross and redirect, the “Deloitte Invoice,” and the “Deloitte Services Breakdown,” witness Danielson’s direct testimony was substantially developed, if not completed, between May 14 and September 27, 2012. Given that Danielson’s pre-filed direct testimony was substantially drafted sometime prior to September 27, 2012, that explains why his stale testimony addresses the prudence of the design, sizing, and cost of Project Phoenix instead of addressing squarely the Commission’s divestiture adjustment for allocating Project Phoenix costs.

testimony without first knowing the issue to be litigated, UI, and not the customers, should be responsible for the entirety of the costs associated with Deloitte.

Witness Danielson repudiates actual rate case expense allegedly billed by Deloitte to UI between January 31, 2014 and April 5, 2014

UI is requesting an additional \$57,592.53 for actual rate case expense billed by Deloitte for services allegedly provided to UI between January 31, 2014 and April 5, 2014. See Exhibit 21, Revised SW-3, page 29 of 31. During this period, Deloitte purportedly billed UI for 117.0 hours of Deloitte consultant time plus \$4.53 in expenses. When asked about rate case expense incurred since the original September 27, 2012 Deloitte Invoice, Witness Danielson testified that everything since the original bill were estimates. TR 55-56. When asked about whether the total amount of services rendered by Deloitte was \$147,221, he testified “No. What you have in front of you is one bill for \$61,824. And everything since then are all estimates, and some of that was what you have in front of you.” TR 56. Witness Danielson testified that Deloitte has not billed anything since the original bill, and the only bill was for \$61,824. TR 55-56. He further testified that Deloitte’s total bill through the date of the hearing was \$61,824, and not \$147,221 as set forth in the exhibits attached to Witness Wiorek’s testimony. TR 57. Witness Danielson’s testimony expressly refuted UI’s request for an additional \$57,592.53. Therefore, the \$57,592.53 actual shown on Exhibit 21, Revised SW-3, page 29 of 31 should be disallowed.

In addition, when comparing the description column for the actual hours on Exhibit No. 8, SW-2, page 2 of 26, to Exhibit 21, Revised SW-3, page 29 of 31, the descriptions are identical. It is unknown why UI duplicated the description for “actual hours” on these two exhibits spanning two separate periods of time as no explanation was given. However, the duplicative explanation for “actual hours” shown on Exhibit No. 21, page 29, is proof that UI

failed to adequately support its request for Deloitte actual rate case expense incurred between January 31, 2014 and April 4, 2014. This is further justification why the entire \$57,592.53 shown on Exhibit 21, page 29, for “actual” is unreasonable and should be disallowed.

Deloitte estimated hours and expenses to complete.

Exhibit 21, Revised SW-3, page 29 of 31, attached to Witness Wiorek’s rebuttal testimony, indicates UI is requesting \$26,604 for Deloitte for estimated rate case expense “to prepare, deliver, follow up for the May 14, 2014 hearing.” Witness Danielson testified that Deloitte did not incur any of the estimated rate case expenses shown on Exhibit 21, Revised SW-3, page 29 of 31. TR 57. Witness Danielson testified that Deloitte’s total bill through the date of the hearing was \$61,824. TR 57. Thus, this amount of \$26,604 should be disallowed with the possible exception for the time he actually spent at the hearing.

In addition, Witness Danielson testified he did not bill for travel time. TR 57. Moreover, since this hearing was limited to the single issue of the Project Phoenix divestiture adjustment, it is highly unlikely that Deloitte will need to spend 9.0 hours “research[ing] and draft[ing] post-hearing recommendation” or 9.0 hours “review[ing] staff recommendation and conference with client.” Exhibit 21, Revised SW-3, page 29 of 31. Therefore, accounting for the time that Witness Danielson spent at the May 14, 2014 hearing, approximately 1.5 hours, Deloitte’s estimated 47.0 hours should be reduced by 45.5 hours. In the event any rate expense is allowed for Witness Danielson, it should be limited to 1.5 hours for his attendance at the hearing and reasonable travel expenses. As there was no breakdown for the \$1,200 in travel expenses, OPC recommends that travel expenses of no more than \$750 should be allowed (\$600 airfare, \$35 rental car, and \$115 for food and lodging).

Deloitte hourly rate is excessive.

Deloitte hourly rates for its principals and senior consultants are excessively high and should be reduced. These hourly rates may be the highest hourly rates presented to the Commission for approval as rate case expense. The hourly rates appear to be arbitrary and without any justifiable rational basis for their amount. Witness Danielson testified that Deloitte hourly billing rates automatically increase every six months. TR 66. He also testified that Deloitte decided to give UI between a 20-25% discount. TR 65-66. UI's customers should not bear this unreasonable expense simply because UI was willing to pay excessively high hourly rates to Deloitte. Moreover, these charges were incurred for stale and unnecessary testimony. Further, UI's rate case expense Witness Wiorek's direct, rebuttal, and deposition testimony (and exhibits) fail to provide any explanation or justification for why the high hourly rates charged by the Deloitte consultants are reasonable or prudent. She testified that she did not prepare her rate case expense exhibits attached to her testimony; they were emailed to her. Exhibit 21, TR 32. In the event any rate case expense for the Deloitte consultants is allowed, the Commission should reduce the hourly rate of the three Deloitte consultants by a minimum of 50%, which would bring these rates more in line with rates approved by the Commission for utility consultants in other dockets.

Actual & Estimated for UI in-house employees

UI is requesting \$16,925 actual and \$6,120 estimated rate case expense for UI in-house salaried employees; however, much of these expenses should be eliminated. UI has not supported why its in-house labor more than doubled from the original request of \$10,326 in

Exhibit 8 (SW-2 page 1) to \$23,045 in Exhibit 21 (Revised Exhibit SW-3, page A). In Interrogatory 5a,⁵ (Exh. 12), staff asked the Company to provide the following information to support rate case expense:

For each individual person, provide the billing rate, and an itemized description of work performed for each individual person; provide detail of hours worked associated with each activity; and, provide an estimate of costs to complete the case by hour for each employee, including a description of estimated work to be performed, and detail of the estimated remaining expense to be incurred.

In its response, the Company provided an Excel spreadsheet entitled “Analysis of In-House Rate Case Expense.” This schedule listed a summary of costs charged by employee, a breakdown by date and by employee name showing the amount of hours, the hourly rate and the total charged time with amount of hours.⁶ Other than vague, all-purpose descriptions for work performed in total by employee, there are no descriptions of work performed on a daily basis. As such, it cannot be ascertained how any one person spent their time during the two-year timeframe shown on this schedule, or whether the employees listed actually worked on this specific docket. UI has the burden to show that its requested in-house rate case expense is reasonable and adequately supported. This spreadsheet supplied by UI does not provide the level of detail that the Commission needs in order to determine the reasonableness of the requested rate case expense. Thus, UI did not meet its burden of proof, and its in-house costs should be denied as unreasonable, unsupported, and unjustified.

If the \$6,120 in estimated rate case expense for UI in-house employee labor, as shown on Exhibit 21, Revised SW-3 page A, is not disallowed, it should be reduced substantially. UI Witness Wiorek was excused from the hearing, so her estimated rate case expense of \$960 should be reduced to \$0. The estimate for Mr. Lubertoizzi’s rate case expense of \$2,320 should

⁵ Notwithstanding OPC’s reference to this interrogatory response, OPC maintains its objection to its admission.

⁶ The hours spent and the hourly rates charged are redacted as confidential.

also be removed as he did not travel to Tallahassee and there is no breakdown for the amount of time he spent reviewing discovery responses. In addition, UI's estimated \$12,000 for travel expenses should be substantially reduced. While the Company provided no support for the \$12,000, since Mr. Hoy attended the hearing, it is reasonable to assume that travel costs of \$250 should be allowed for Mr. Hoy (\$125 food and lodging, \$125 for car rental and gas).

Actual & Estimated for UI legal services

Rate case expense for UI legal services should be reduced. UI is asking for approximately \$30,316 for actual and \$25,060 for estimated expenses. See Exh. 21, Revised SW-3, page A of 31. If the Commission agrees and disallows all Deloitte rate case expense, then \$2,080 in legal services related to Deloitte testimony should be disallowed.⁷

Allocating approved rate case expense

A benefit of litigating a generic issue common to all UI systems is that any rate case expense approved by the Commission would not unduly burden any one UI system. Any rate case expense approved by the Commission should be allocated to all Florida UI systems based on ERCs as of the date of the final order and should be amortized over four years. The amortization period should begin for all systems the month following the date the order is final in this docket. For any future general rate case which includes any amortization related to this docket, the rates should be reduced at the end of the 4-year timeframe after the date of the final order in this docket, not four years after any prospective rates are approved. In addition, UI should not be allowed to seek a limited proceeding for the sole purpose of recovering rate case expense approved by the final order in this docket. Any new systems acquired by UI should not

⁷ If the Commission agrees that rate case expense incurred prior to the issuance of the OEP should be disallowed, then rate case expense for legal services should also be disallowed for this period.

be allocated any rate case expense approved by the Commission. If UI divests any systems and ERCs, UI should not reallocate rate case expense to any remaining systems and ERCs.

Conclusion

The divestiture issue is uniquely one of corporate allocations, not how the system was designed, and any testimony supporting this position could have easily been provided by UI management. Additionally, UI's Witness Wiorek failed to provide or document why the excessively high hourly rates charged by Deloitte are reasonable or prudent, or why UI choose to retain these expensive consultants for this proceeding. UI also provided very little detailed support or explanations for the Deloitte time incurred in preparing direct testimony, and no detailed support or explanations for the fees incurred after the testimony was filed or the estimate to complete. UI in-house employee labor requested for this docket should be removed or substantially reduced as the Company failed to adequately support the reasonableness of these charges. Further, any legal fees associated with the Deloitte consulting fees should also be removed. For these reasons, UI's rate case expense request should be reduced substantially.

ISSUE 3: Should this docket be closed?

*** Not until the Commission has determined the amount of any regulatory asset or liability (if any) created by Commission adjustment to Project Phoenix approved in the final order. Further, the Commission should implement certain measures to ensure UI's present and future compliance with the Generic Docket Settlement, approved by Order No. PSC-14-0044-FOF-WS, issued January 22, 2014, in this docket, requiring UI to make certain adjustments to the books and records for all its Florida systems. ***

ARGUMENT

OPC: This docket should be closed but only after the Commission has determined the amount of any regulatory asset or liability (if any) created by the Commission's adjustment to Project Phoenix approved in the final order. Further, the Commission should implement certain measures to ensure UI's present and future compliance with the Generic Docket Settlement, approved by Order No. PSC-14-0044-FOF-WS, issued January 22, 2014, in this docket, requiring UI to make certain adjustments to the books and records for all its Florida systems.

Respectfully submitted,

J.R. KELLY
Public Counsel



Erik L. Saylor
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399

(850) 488-9330

Attorneys for the Citizens
of the State of Florida.

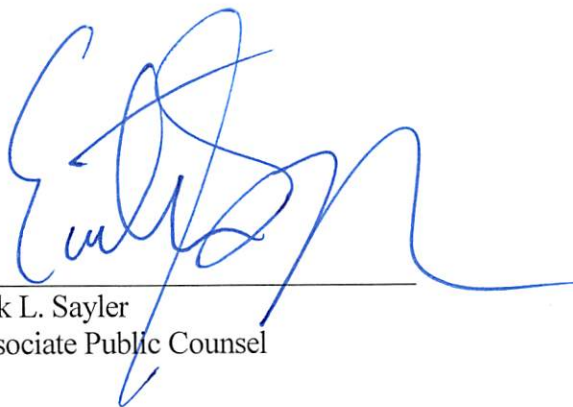
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Office of Public Counsel's **CITIZENS' POST-HEARING STATEMENT OF POSITIONS AND POST-HEARING BRIEF** has been furnished by electronic mail to the following parties on this 30th day of May, 2014, to the following:

Martha Barrera
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Martin S. Friedman
Friedman, Friedman & Long, P.A.
766 North Sun Drive, Suite 4030
Lake Mary, FL 32746

Patrick C. Flynn
Utilities, Inc.
200 Weathersfield Avenue
Altamonte Springs, FL 32714-4027



Erik L. Sayler
Associate Public Counsel