

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Office of Public Counsel for	/	Docket No. 140107-OT
Declaratory Statement Regarding Discovery in	/	
Dockets or Proceedings Affecting Rates or Cost of	/	
Service Processed with the Commission's Proposed	/	Filed: June 16, 2014
Agency Action Procedure.	/	

OPC'S RESPONSE TO UTILITIES, INC.'S MOTION TO INTERVENE

The Office of Public Counsel ("OPC"), through its undersigned counsel, hereby responds to the Motion to Intervene that Utilities, Inc. submitted in the above docket on June 12, 2014.

OPC does not object to an order granting Utilities, Inc.'s Motion to Intervene in Docket No. 140107-OT, provided that, in the interests of fairness, the Commission requires Utilities, Inc. to submit any arguments in opposition to OPC's Petition for Declaratory Statement it intends to present that are not included in the Motion to Intervene by a date certain and affords OPC an opportunity to respond to such arguments prior to the time the Commission takes up the Petition for Declaratory Statement. Further, OPC feels compelled to respond to certain inaccurate assertions made in the Motion.

Response to assertions in Motion to Intervene

1. At pages 1-2, Utilities, Inc. says, "If the interpretation of the PAA procedure sought by OPC is adopted by this Commission. . ." Utilities, Inc. thus implies that OPC is advancing a new interpretation that will change the manner in which the Commission processes PAA cases. This is not the case. OPC's Petition for Declaratory Statement asks the Commission to affirm the interpretation that OPC has a statutory right to intervene in a ratemaking proceeding and obtain

discovery from a petitioning utility prior to the issuance of a PAA order that the Commission “adopted” at least as early as 2009. In the 2009 Florida Public Utilities Company (“FPUC”) Order cited in OPC’s Petition¹, the Commission specifically rejected FPUC’s argument that OPC was not entitled to discovery prior to the entry of a PAA order. The Commission based its rejection of FPUC’s effort to resist OPC’s discovery prior to the issuance of a PAA order on OPC’s rights under Section 350.0611(1), F.S., and its recognition that the proceeding “commenced” when FPUC filed its application for a rate increase — the same fundamental elements of applicable law on which OPC bases its Petition for Declaratory Statement in this case.

2. At page 2, Utilities, Inc. states, “. . .it (a ruling confirming OPC’s discovery rights upon intervention prior to the issuance of a PAA order) will drastically increase the rate case expense incurred by the Utility’s subsidiaries . . .” Utilities, Inc. claims that a declaratory statement in the form that OPC requests will somehow create incremental rate case expense, over and above that which has occurred in the past. The impression that the Movant tries to create is inaccurate. Over time, OPC has been intervening in PAA rate cases and obtaining discovery from the petitioning utility prior to the issuance of the PAA order. An example of such a case² involved Labrador Utilities, Inc., one of the subsidiaries of Utilities, Inc. on whose behalf the Motion to Intervene was filed.³ As OPC pointed out in its Petition, in the Labrador Utilities case the utility answered OPC’s discovery requests prior to the issuance of the PAA order without claiming that OPC had no right to serve those discovery requests. In other words, OPC’s discovery activities and related rate case expense have been part of the PAA ratemaking equation in the past; the continuation of that practice is neither new nor incremental in nature.

¹ Order No. PSC-09-0182-GU, issued in Docket No. 080366-GU on March 27, 2009.

² Docket No. 110264-WS.

³ See Motion to Intervene of Utilities, Inc., at page 2, footnote 1.

3. At page 2, Utilities, Inc. refers to “. . .rate case expense incurred by the Utility’s subsidiaries (*already a sensitive issue for Commissioners*). . .” (emphasis provided) Utilities, Inc. appears to suggest that an exercise of OPC’s discovery rights somehow exhibits a lack of concern over the level of rate case expense borne by customers. To the contrary, OPC is acutely aware of the impact of rate case expense on customers when spread over a relatively small customer base. OPC does not intervene and issue formal discovery requests in every case. However, OPC must preserve and exercise its discovery rights prior to the issuance of a PAA order when OPC believes the measure is necessary to carry out its statutory obligation to represent the interests of the utilities’ customers in a given case. Besides, rate case expense is a matter to which *all* participants⁴ must be “sensitive,” *not* a card for the utility to play in an effort to avoid needed scrutiny of its demand for more revenues. More importantly, OPC’s Petition for Declaratory Statement is based on OPC’s legal rights under Sections 350.0611, 366.093(2), and 367.156(2), F.S., and Rule 28-106.206, F.A.C., to obtain discovery prior to the issuance of a PAA order. Any argument in opposition to OPC’s Petition that is based on the level of rate case expense would be relevant—not to the timing of OPC’s discovery activities—but to the establishing of discovery parameters that are appropriate to the scope and complexity of a given case.

4. At page 2, Utilities, Inc. asserts that pre-PAA order discovery by OPC “. . . will otherwise exacerbate an already tight deadline within which the Commission has to rule in a PAA proceeding, and is contrary to the purpose of the PAA process.” The Movant again wrongly implies an effect stemming from a change in course. In addition to continuing its inaccurate theme that granting OPC’s petition would lead to altering the established practice,

⁴ This is not a theoretical observation. For example, the Commission disallowed a portion of the rate case expense that Utilities, Inc. claimed in Docket No. 120209-WS. See Order No. PSC-14-0025-PAA-WS, dated January 10, 2014, at pages 37-44.

Utilities, Inc. offers the illusion that the 5-month PAA time frame bounds a separate, standalone, insulated process. The course of the PAA order is instead entirely contingent on whether it results in a protest. Unless OPC's concerns are addressed adequately during the initial PAA period, the ratemaking process in a PAA case will consume—not 5—but 13 months from commencement to end. Further, by operation of Section 120.80(13)(b), F.S., a statute that is specific to the Commission, any portion of a Commission-issued PAA order that is not the subject of a protest is deemed stipulated. Therefore, OPC's statutory right to obtain discovery prior to the issuance of a PAA order may be critical in a given case to its ability to avoid having to protest the order in its entirety simply because of an inability to assess the utility's claim during the earlier phase. In this regard, to the extent that the "purpose of the PAA process" is to shorten the amount of time necessary to complete a rate case, OPC's discovery rights are consistent with, and in some cases are likely essential to, that goal.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Office Public Counsel's Response to Utilities Inc. Motion to Intervene has been furnished by electronic mail to the following parties on this 16th day of June, 2014.

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