

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in water and
wastewater rates in Charlotte, Highlands, Lake,
Lee, Marion, Orange, Pasco, Pinellas, Polk and
Seminole Counties by Utilities, Inc. of Florida

Docket No. 160101-WS

**UTILITIES, INC. OF FLORIDA'S RESPONSE TO SUMMERTREE WATER
ALLIANCE'S PETITION TO INTERVENE**

Applicant, UTILITIES, INC. OF FLORIDA ("UIF") by and through its undersigned attorneys files this Response to the Summertree Water Alliance's ("SWA") Petition to Intervene, and states as follows:

1. An unknown type of entity calling itself the Summertree Water Alliance c/o Ann Marie Ryan, has requested to intervene in this rate case. It is presumed that it is an association of some type.
2. The law on standing of associations to intervene in administrative proceeding is well settled and has been addressed by the Courts and this Commission many times.
3. In Order No. PSC-14-0329-PCO-EU (June 25, 2014) this Commission articulated that standard:

Standard for Intervention as an Association

Pursuant to Rule 25-22.039, F.A.C., persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition for leave to intervene. Petitions for leave to intervene must be filed at least five days before the evidentiary hearing, must conform with Rule 28-106.201(2), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding. Intervenors take the case as they find it.

To have associational standing, the intervenor must satisfy the test for associational standing set forth in *Florida Home Builders v. Dept. of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982) (for rule challenges), and extended to Section 120.57(1), F.S., hearings by *Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services*, 417 So.2d 753 (Fla. 1st DCA 1982). Associational standing may be found where: (1) the association demonstrates that a substantial number of an association's members may be substantially affected by the Commission's decision in a docket; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members. Florida Home Builders at 353.

4. While SWA alleged standing of individuals under *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d. 478 (Fla. 2nd DCA 1981), the Petition is devoid of any allegations that the three prong test for associational standing are met. Frankly at this point in the proceeding it is impossible for SWA to meet the first prong of that test.

5. The initial criteria that must be met for an association to have standing in an administrative proceeding is that a “substantial number of an association’s members may be substantially affected by the Commission decision in a docket”. That criteria not only has to be alleged but the association has the burden to prove that fact through evidence adduced at hearing. *Palm Beach County Environmental Coalition v. Department of Environmental Protection*, 14 So.3d 1076 (Fla. 4th DCA 2009). *Last Stand v. KW Resort Utilities Corp.*, Final Order, OGC Case No. 14-0393 (FDEP Feb. 24, 2016) where DEP ruled that the association in that proceeding did not have standing as it “did not present evidence showing that a substantial number of its members’ substantial interests potentially could be injured.”¹

¹ See pages 90 through 94 of the Recommended Order attached as Exhibit “A” to the Final Order. A copy of this Final Order can be found in Docket No. 150071-SU.

6. SWA's efforts to intervene are "too little too late". All prefiled testimony has been filed and there is none that proves that a "substantial" number of the SWA's members will be substantially affected. In fact we have no idea how many members SWA has, and at this point in the proceeding SWA has no way to prove that.

7. In addition, there is no evidence of SWA's "general scope of interest and activity", which is required to meet the second prong of the test. Again, at this point in the proceeding SWA has no mechanism with which to prove through the introduction of evidence that critical fact.

8. There is no basis to sympathize with SWA's late filing of its Petition to Intervene. Ms. Ryan, who apparently has some unspecified position with SWA, has been aware of this proceeding since it was filed. In fact, Ms. Ryan started filing letters in this docket as early as July 1, 2016 even before the MFRs were filed. To the contrary, if SWA is allowed to intervene, the final hearing will likely be lengthened beyond that which was planned for.

9. If this Commission mistakenly allows SWA to intervene, it must make it clear that SWA will be held to the same standards and subject to the same restrictions as the other parties. For instance, no one can testify on behalf of SWA since SWA has not filed any prefiled testimony, which would include Ms. Ryan.

WHEREFORE, based upon the argument and authorities set forth above, Utilities, Inc. of Florida, respectfully requests this Commission deny the Summertree Water Alliance's Motion to Intervene.

Respectfully submitted this 24th day of
April, 2017

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 24th day of April, 2017, to:

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