

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 OPC'S
MOTION TO STRIKE PORTIONS OF REBUTTAL TESTIMONY AND EXHIBITS**

Applicant, UTILITIES, INC. OF FLORIDA ("UIF") by and through its undersigned attorneys files this Response to the Office of Public Counsel's ("OPC") Motion to Strike Portions of Rebuttal Testimony and Exhibits of UIF witness Patrick C. Flynn ("Motion"), and states as follows:

1. In Mr. Flynn's Prefiled Direct Testimony filed on August 31, 2016, on pages 3 through 13 he identified and described in detail 47 proforma projects (one was subsequently withdrawn). To the extent contracts and documentation were in existence those were provided as well as Exhibits to his testimony.

2. As admitted by OPC in its Motion, over the course of the next several months UIF provided updated documentation as it became available. Most of these updates were provided in discovery responses on January 9, 2017, February 21, 2017 and March 25, 2017 before Mr. Woodcock filed his Prefiled Testimony. OPC's statement in its Motion that Mr. Woodcock only had four days to review this documentation was incorrect. Mr. Woodcock admitted that this documentation was provided "a little more than a week" before his Prefiled Testimony was due (p. 43, line 14). Certainly one week would be sufficient time to focus on the significant one, but apparently he chose not to do so.

3. UIF provided additional updated documentation in discovery responses served on March 2, 2017, and to OPC informally on March 14, 2017. The complete documentation was filed with Mr. Flynn's Prefiled Rebuttal Testimony in rebuttal to Mr. Woodcock's testimony addressing those projects for which he did not think sufficient documentation existed.

4. At the request of OPC, between January 23 and 25, 2017, OPC witness Woodcock visited all of the UIF systems that he wanted to visit and view proforma projects. His testimony does not question the prudence or necessity of any of the projects. He only disagrees with the cost of projects that he says he did not have any opportunity to review. He also suggests recognizing the cost of projects that ultimately were less than that in Mr. Flynn's Prefiled Direct Testimony, but not the increased cost when the project cost was more than in Mr. Flynn's Prefiled Direct Testimony.

5. Mr. Woodcock's statement quoted by OPC in its Motion that UIF had the burden to prove costs at the time it filed its MFRs is a legal opinion which he is not qualified to render. In fact, that is the very purpose of OPC's Motion.

6. With regard to the documents served by UIF in late February and early March, 2017, Mr. Woodcock has chosen to play ostrich. In response to UIF's Interrogatory No. 6, as quoted by OPC in its Motion, Mr. Woodcock basically says he just isn't going to review them. When asked about each specific project that he had excluded from his schedule of acceptable projects in his Prefiled Testimony, he again stated that he did not have the inclination to review the documentation. While no one can make Mr. Woodcock review the documentation, he and OPC cannot then complain about the consequences of such ambivalence.

7. OPC's due process rights have not been infringed upon. All of the proforma projects were identified and described in Mr. Flynn's Prefiled Direct Testimony. Mr. Woodcock was afforded an opportunity to visit all of UIF's systems, including those with proforma projects. He does not question the reasonableness or prudence of any project, so the bottom line is whether the costs of those projects are reasonable. Mr. Woodcock has correctly articulated this Commission's policy of considering proforma projects based upon actual invoices and signed contracts based upon competitive bids (p. 35, lines 2 & 6). All of the proforma projects of UIF in this case meet one of those requirements.

8. OPC claims it does not have a meaningful opportunity to vet the cost of the proforma projects that it seeks to exclude. However, by Mr. Woodcock's own admission he chose not to do so, choosing to put all of his eggs in the basket of asserting that all of the documentation had to be filed with the original MFRs. It is clearly disingenuous to claim that the documentation filed with Mr. Flynn's Prefiled Rebuttal Testimony is "unsubstantiated cost information".

9. The table included in the Motion at pages 6 & 7, clearly shows the unreasonableness of OPC's argument. Much of the documentation which supports those categories that OPC says is lacking, has been provided to OPC prior to the filing of Mr. Woodcock's testimony, but Mr. Woodcock has chosen to ignore it. Even as to that documentation that he did choose to review, if the costs of a particular project were greater than the original estimate for that project he reduced his recommendation down to the original estimate, but did not offset that reduction by the cost of those projects that exceeded the original estimate. Mr. Woodcock clearly had a myopic view to recommend the lowest amount possible. Further, in OPC's deposition of Mr. Flynn it extensively questioned Mr. Flynn on the proforma projects documentation for approximately two hours.

There is No Due Process Violation

10. It is interesting, and somewhat contradictory, for OPC to argue that changes in the cost of some pro forma projects that decrease are not fundamental changes for which it asserts a due process violation, but it is so when the cost increases. All of the proforma projects were identified and described in Mr. Flynn's Prefiled Testimony. Mr. Woodcock did not disagree with the prudence or necessity of any of them. What is being done through the discovery process is to refine those costs, not to create new projects.

11. It is disingenuous for OPC to argue that had they received the detailed proforma cost documentation earlier that it could have conducted discovery. OPC did virtually no discovery on any of the proforma documentation it admitted that it reviewed. Now OPC is claiming that it needs additional discovery to vet the new proforma documentation. This a convenient argument that looks good on paper but lacks a substantive basis.

12. This Commission considered an almost identical fact situation in a Progress Energy rate case, in Order PSC-09-0640-PCO-EL (September 21, 2009) and rejected OPC's similar arguments. In that case, OPC and other intervenors sought to reschedule the hearing when through rebuttal testimony Progress Energy filed a new load and energy forecast which increased the revenue requirement by \$94.8 million. As in the instant case, OPC argued that its due process rights had been violated. As in the instant case OPC argued that it needed an opportunity to respond, present evidence and argument. In spite of the evidence Progress Energy presented in its rebuttal testimony of the \$94.8 million revenue increase, it made clear that it was not any seeking any more in revenues than the amount requested in the original MFRs. This Commission denied OPC's Motion, In the instant case, even though the actual cost of the proforma projects exceed the

amount requested in the MFRs resulting in approximately \$400,000 of additional revenue required, UIF is not seeking more revenues than those set forth in its MFRs, and the Commission may accept this statement as that affirmation. The Commission in the Progress Energy case distinguished the General Development Utilities case relied on by OPC in its Motion by noting that in the GDU case the utility sought to include additional plant that existed at the time of filing (whereas the plant in the instant case is proforma), and GDU had sought to increase its revenue requirement above that in its original MFRs (which UIF is not seeking to do). OPC in the GDU case also offered the same alternative that has been offered in the instant case to strike the “offending” portion of the rebuttal testimony. That request was also denied, noting that the testimony rebutted that of an intervenor witness, and that such testimony could not be used to increase the revenue requirement above the amount in its original request. This Commission made a similar ruling in Order No. PSC-96-0279-FOF-WS, because the utility was not seeking an increase in its original request.

Burden of Proof

13. UIF acknowledges that it carries the burden of proof and that such burden can be met by documentation presented through the duration of the proceeding. The burden is to prove entitlement to the revenue requirement requested in the original MFRs.

Legal Standard for Striking Rebuttal Testimony

14. OPC’s assertion that Mr. Flynn’s Prefiled Rebuttal Testimony is not in rebuttal of any Staff or OPC witness is erroneous. His testimony directly rebuts Mr. Woodcock’s testimony regarding various proforma projects in which Mr. Woodcock believed were not supported, which is not surprising since he refused to even review much of the documentation. As previously pointed out, such argument was rejected by this Commission in the Progress Energy case above.

15. In Order No. PSC-11-0563-PCO-EI (December 8, 2011) this Commission refused to strike rebuttal testimony of studies that were available when the witness' direct testimony was filed since it was in rebuttal of an intervenor's witness, and in addressing the due process complaint pointed out that the intervenor had an opportunity to cross examine the witness. In the instant case the OPC also has been able to depose Mr. Flynn. Also see Commissioner Graham's opinion in Order No. PSC-11-0203-PCO-GU (April 22, 2011).

16. An analogous factual situation (which incidentally involved Mr. Woodcock) in Order No. PSC-10-0610-PCO-WU (October 4, 2010) includes a detailed analysis of the law regarding striking rebuttal testimony. That Order includes distinguishing the lone Order cited by OPC in its Motion by pointing out that in that case the rebuttal testimony sought to introduce a regulatory expense that was not included in the utility's case-in-chief nor addressed by testimony of another party. In the instant case all of the proforma projects were included in the Prefiled Direct Testimony, and Mr. Flynn's Rebuttal Testimony rebutted Mr. Woodcock's testimony that certain costs were not adequately supported.

WHEREFORE, based upon the argument and authorities set forth above, Utilities, Inc. of Florida, respectfully requests this Commission follow the Commission precedent and deny OPC's Motion.

Respectfully submitted this 25th 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 25th day of April, 2017, to:

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