

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for Rate 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 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Summertree Water Alliance and Mrs. Ann Marie Ryan Motion for Reconsideration of Order No. 17-0157 Denying Motion to Dismiss, Requesting Consideration by the Full Commission and Motion for Oral Argument

Filed: May 6, 2017

The Summertree Water Alliance and Mrs. Ann Marie Ryan, Petitioners, by and through their counsel, file this motion for consideration of an order denying their motion to dismiss, seeking consideration of this motion by the full Commission and requesting oral argument and in support of these motions and requests state as follows:

1. On May 2, 2016, Petitioners filed a motion to dismiss the application by Utilities, Inc. of Florida ("UIF") for a water and wastewater rate increase.
2. On May 4, UIF filed a response to the motion seeking denial.
3. On May 4, 2017, the prehearing officer issued Order No. (hereinafter, the "Denial Order") denying Petitioners motion to dismiss.
4. The prehearing officer relied entirely on Rule 28-106.204(2), F.A.C. (hereinafter, the "Rule") to deny the motion. The Rule, if applicable to a rate application proceeding, which Petitioners do not concede, requires the filing of a motion to dismiss within 20 days after assignment of the prehearing officer, unless there are incurable errors in the petition. There are incurable errors in UIF's application and supporting information which are identified at length in Petitioners' motion to dismiss.
5. Petitioners request reconsideration of the Denial Order by the full Commission and note that the denial mistakenly applied the Rule and, even when applying it, ignored the fact that Petitioners motion to dismiss complied with the Rule by identifying the incurable errors in UIF's MFRs, testimony and proposed exhibits.
6. Petitioners' motion establishes that there are incurable errors in UIF's presentation of its minimum filing requirements (MFRS), testimony and proposed exhibits.
7. By Order No. 17-0150 issued May , 2017, the prehearing officer granted intervention to Petitioner, Summertree Water Alliance.
8. By Order No. 17-0155 issued May, 2017, the prehearing officer granted intervention to Petitioner, Mrs. Ann Marie Ryan.
9. By Order No. 17-0146 issued May , 2017, the prehearing officer granted intervention to Intervenor, Seminole County.
10. In each of these orders granting intervention, the intervention was granted "with limitations."
11. The principal limitation is that Petitioners and Seminole County take the case as they find it and cannot present their own testimony at the technical hearing.
12. This limitation applies equally to UIF, and should apply equally to Commission Staff. UIF cannot bolster its application by the introduction of testimony or evidence which UIF failed

to previously disclose to the Commission and the parties in its MFRs, testimony and proposed exhibits. Similarly, given standard limitations on friendly cross, no party should be permitted to assist UIF in bolstering its application through the introduction of information or documents not presented in the MFRs, testimony or proposed exhibits of UIF.

13. Taking the case as it finds it, Petitioners' motion to dismiss points out that UIF's MFRs, testimony and proposed exhibits are incurably defective in that they do not provide sufficient information upon which the Commission can determine a proper revenue requirement for UIF. Principally, UIF has not provided information necessary to reflect reductions below its alleged test year expenses and plant in service which UIF repeatedly indicates will occur, but which UIF refused to quantify or "voluntarily" disclose to the Commission or the parties in the MFRs, testimony, proposed exhibits or discovery.
14. "...THERE IS A DIFFERENCE TO THIS COMMISSION BETWEEN EXPENDITURES STATED AND EXPENDITURES JUSTIFIED.," (emphasis added), stated the Commission in Order No. 24715, in which it denied Southern States Utilities, Inc., then Florida's largest water and wastewater utility, a water or wastewater rate increase. FPSC ORDER NO. 24715, APPLICATION FOR WATER AND WASTEWATER RATE INCREASE, SOUTHERN STATES UTILITIES (1991). This Order further states: **"there is a difference to this Commission between expenditures stated and expenditures justified. The South Florida Natural Gas and Florida Power Corporation cases previously cited support the concept that stating what an expenditure is, is not the same as justifying why that expenditure was made so that we can determine its reasonableness. Producing cost data does not in and of itself show the reasonableness of that data. The record does not contain justification for the underlying data upon which the 1990 and 1991 projections were based."**
15. UIF IDENTIFIES EXPENDITURES BUT FAILS TO JUSTIFY THEM in its MFRs, testimony and proposed exhibits and this is an incurable error as the Commission cannot ignore these reductions and determine a proper revenue requirement without such information.
16. The motion to dismiss establishes that UIF:
 - a. Presents NO EVIDENCE OF UIF ATTEMPTS TO SECURE NO COST OR LOST FUNDING FOR CAPITAL IMPROVEMENTS
 - b. Presents NO EVIDENCE OF REQUEST FOR LEGISLATIVE APPROPRIATIONS (SUMMERTREE WATER ALLIANCE AND PASCO COUNTY SECURED \$1 MILLION)
 - c. Presents NO EVIDENCE OF REQUESTS TO DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR STATE REVOLVING LOAN FUNDS
 - d. Presents NO EVIDENCE OF REQUESTS TO ANY GOVERNMENT OR OTHER ENTITY FOR LOW COST OR NO COST FUNDS
 - e. Presents NO EVIDENCE OF UIF SCRUTINY OF QUALITY OF SERVICES OR COST OF SERVICES BEING PROVIDED BY AN AFFILIATE
 - f. Presents NO EVIDENCE OF AUDIT PERFORMED BY UIF OF QUALITY OF SERVICE BEING PROVIDED BY WATER SERVICE CORP AFFILIATE
 - g. Presents NO EVIDENCE OF AUDIT PERFORMED BY UIF OF COST BEING ALLOCATED BY WATER SERVICE CORP AFFILIATE TO UIF
 - h. Presents NO EVIDENCE THAT COST BEING ALLOCATED BY ITS AFFILIATE, WATER SERVICE CORP., ARE COMMENSURATE WITH COSTS ACTUALLY BEING INCURRED BY ITS AFFILIATE ON BEHALF OF UIF AND ITS CUSTOMERS IN FLORIDA

- i. Failed to maintain its books and records to properly and accurately reflect its plant in service and to reflect prior Commission ordered adjustments and thus cannot be relied upon
 - j. Fails to disclose information to the Commission and parties necessary to the Commission's determination of a proper revenue requirement despite repeated admissions that UIF's costs will go down.
 - k. UIF President John Hoy admits as follows: "And we believe that, other than a few things that we concede are potential reductions, that the utility is entitled to get – I go back to the objective that says that we have the opportunity to earn our allowed return" (deposition of John Hoy at page 142). However, UIF never has disclosed to the Commission or the parties the reductions UIF's President is conceding should be made or quantified the amount of such reductions such as those described earlier and later in this motion.
17. UIF is obligated to present evidence to establish that investments made in plant in service are prudently incurred.
18. UIF is obligated to present evidence to establish that the amount it invests in its facilities are reasonable.
19. UIF is obligated to present evidence to establish that expenditures made to operate its facilities are prudently incurred.
20. UIF is obligated to present evidence that the amount it spends to operate its facilities are reasonable.
21. Where services or materials are provided by an affiliate of UIF, UIF's evidentiary burden is that much higher.
22. For the reasons set forth above in this motion for reconsideration and in Petitioners' motion to dismiss, UIF has failed to present evidence in its MFRs, testimony and proposed exhibits filed prior to the technical hearing to satisfy these burdens and to permit the Commission to determine a proper and accurate revenue requirement. Taking the case as we find it now, these are incurable errors of UIF and the application for increased rates should be dismissed.
23. According to Commission Order No. 95-1432-FOF-WS in Docket No. 950495, Application for Rate Increase of Southern States Utilities, Inc., the standard to be used when the Commission considers a motion to dismiss is whether the applicant has stated a cognizable claim if the facts presented by the utility are viewed in the light most favorable to the utility.
24. In Order No. 95-1432, the Commission cited the First District Court of Appeals decision in Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla 1st DCA 1993), for the proposition that "... in determining the sufficiency of the complaint, the trial court must not look beyond the four corners of the complaint, ... nor consider any evidence likely to be produced by the other side." See also Holland v. Anheuser Busch, Inc., 643 So. 2d 621 (Fla 2nd DCA 1994)(stating that it is improper to consider information extrinsic of the complaint.).

25. In its MFRs, testimony and proposed exhibits, UIF has presented only evidence tending to establish increased expenses and investments to the exclusion of any evidence which would result in a lower revenue requirement.

26. UIF has presented no evidence as to the associated expense and investment savings resulting from its management improvements, if implemented, such as the asset management system, CMMS, geographic information system and other related programs (predictive maintenance, preventive maintenance) and its additional plant in service.

27. Therefore it is clear that UIF's expenses and investments included in the revenue requirement suggested in UIF's MFRs, testimony and proposed exhibits are not representative of UIF's revenue needs in the future and UIF's failure to present sufficient information to permit the Commission to make such a determination is an incurable error which the Commission should not ignore.

28. The admissions of UIF and failures to produce required evidence indicated in the paragraphs above establish that UIF has failed to meet its obligations and duties to the Commission and to its customers, most egregiously, UIF has failed to present evidence that it has provided high quality service to its customers at the most reasonable cost. UIF also has not provided evidence sufficient to establish that present rates are not adequate to recover prudently incurred expenses and do not already permit UIF the opportunity to recover an adequate return on its prudent investment in plant in service/rate base.

29. Existing case law identified in Petitioner's motion to dismiss supports the Commission granting this Motion to Dismiss and is incorporated herein by reference.

30. Petitioners further note that application of the Rule to Petitioners violates Petitioners' rights to due process and equal protection under the law. The Rule is misapplied. Petitioners are aware of a plethora of Commission orders addressing the merits of motions to dismiss filed before, during and after initiation of evidentiary hearings in Commission proceedings.

31. The Commission's attention is drawn to Commission Order No. 95-1432 in Docket No. 950495 in which the Commission considered four motions to dismiss a utility's application for a rate increase. Perhaps most noteworthy, each motion to dismiss was made more than a year after the utility successfully complied with the Commission's minimum filing requirements.

32. Petitioners note that neither Petitioners nor the Commission could establish that UIF's MFRs, testimony and proposed exhibits were rife with incurable errors within 20 days of the appointment of the hearing officer to this proceeding. Application of the Rule in the fashion suggested in the Denial Order violates Petitioners due process and equal protection rights under the Florida and United States Constitutions.

33. In conclusion, the MFRs, direct and rebuttal testimony and proposed exhibits of UIF are rife with incurable errors. UIF's opportunity to present affirmative evidence to support its request for a \$7 million increase in its revenue requirements is closed. UIF has failed to support any change in UIF's revenue requirement as UIF has failed to present evidence without which no such determination can be made; and this is an incurable error.

34. Given the magnitude of the constitutional questions involved and the rate impact on UIF customers, Petitioners hereby move for permission to present oral argument. Oral argument will assist the Commission in understanding and evaluating why the MFRs, direct and rebuttal testimony and proposed exhibits of UIF contain incurable errors, not for what they present, but for what they fail to disclose the Commission and the parties.

35. The Alliance and Mrs. Ryan believe that no more than 5 minutes per party would be necessary to present Oral Argument.

36. Given the fact that it is the weekend and the technical hearing begins on Monday, May 8, 2017, counsel for Petitioners is unable to represent the positions of the parties, and is desirous of making such parties aware of this motion for reconsideration promptly. Therefore, this motion is being filed with counsel's representation that it will be served on the parties and calls will be made to counsel for the parties to seek their positions. The Commission will be notified of the results when such information is received by the undersigned from the parties.

WHEREFORE, the Summertree Water Alliance and Mrs. Ann Marie Ryan respectfully request that the full Commission reconsider the Denial Order, grant Petitioners' request for oral argument and dismiss the application for higher rates as filed by Utilities, Inc. of Florida for its incurable errors.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the following on this 2nd day of May, 2017:

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