

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in water and	/	
wastewater rates in Charlottes, Highlands, Lake, Lee,	/	Docket No. 20160101-EI
Marion, Orange, Pasco, Pinellas, Polk, and Seminole	/	
Counties by Utilities, Inc. of Florida	/	Filed: May 31, 2019
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CITIZEN'S RESPONSE TO UIF'S COMMENTS ON REMAND

THE CITIZENS OF THE STATE OF FLORIDA, OFFICE OF PUBLIC COUNSEL ("OPC" or "Citizens"), by and through its undersigned counsel, responds to comments submitted by Utilities, Inc. of Florida (UIF).

Staff's initial analysis of how to proceed on remand is accurate and appropriate, notwithstanding UIF's comments. UIF is correct that the Court did not hold that the prepaid connections must be removed. UIF's Comments at 1. However, because the Commission's order and analysis included the prepaid connections without any evidence supporting UIF's assertion that the connections met the threshold requirement in Section 367.081(7), Florida Statutes, ("the Five-Year/Five Percent Law"), Staff's initial inclination to remove the prepaid connections from the calculation is the appropriate approach because, as OPC argued and UIF conceded below, prepaid connections are merely a financial arrangement to reserve capacity on a system. *See* Transcript of Hearing Vol 7 at 1203 ("Q. So they've reserved demand, but they are not actually using any of that demand, correct? A. That's correct. Until they connect, they're not using it. But by making the payment, they have placed an obligation on the utility to be ready to serve. That's part of the contract.").

In the PSC's order and in the First District's opinion, the only dispute relevant on remand is the application of prepaid connections for LUSI and Sandalhaven. *See* Order PSC-2017-0361-FOF-WS at page 96 ("Of the remaining five systems in dispute, the differences can be attributed

to the treatment of prepaid connections and the system build-out status. . . . The treatment of prepaid connections affects the U&U calculations for LUSI and Sandalhaven.”); *Citizens v. PSC*, No. 1D17-4425, slip op. at 2 (“OPC . . . raises three issues. . . whether the Commission’s analysis of the Sandalhaven and LUSI wastewater systems departed from the standards for ‘used and useful’ analysis set forth in section 367.081(2)(a), Florida Statutes. . .”).

The First District disagreed with the PSC’s expansive interpretation of its own rule and determined that the statute applied to prepaid connections “provided adequate proof is presented that pre-paid connections are ‘property’ that falls within the statutory strictures of section 367.081(2) and that one of the temporal restrictions in subsection (2)(a) is met.” *Id.* at 9. The Court then stated that it was unable to determine from this record “the extent to which the pre-paid connections at issue in this case fall within the statutory limits. . . .” *Id.* The Court therefore remanded for additional proceedings to make this determination.

Prepaid Connections in Used and Useful Calculations

UIF concedes that the Sandalhaven system had negative growth and there was no application of the Five-Year/Five Percent Law to determine Used and Useful. UIF’s Comments at 1. However, the Commission’s order did include the prepaid connections to calculate used & useful, which is in contravention of the First District’s decision which requires the application of the statute.

For Sandalhaven, removing any prepaid connections that fall outside of the Five-Year/Five Percent threshold, and disallowing the remainder, when there is negative growth, is the same as removing all prepaid connections from the calculation. The inclusion of the prepaid connections changed the used and useful percentage from the Englewood Water District

(“EWD”) capacity from 42.23%¹ to 95.88%². *See 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. 20160101-WS, Order No. PSC-2017-0361-FOF-WS at 97 (Sept. 25, 2017) (“Order”). Specifically, the Commission’s order provided the following analysis:

For the EWD capacity purchased by Sandalhaven, UIF and OPC agreed on the use of 300,000 GPD for EWD capacity and 138,285 gpd for test year flows. The difference is in prepaid connections and an adjustment due to excess I&I. We have determined an annual I&I adjustment of 4,225,529 gallons, or 11,577 gpd, which reduces the flow to 126,708 gpd. Regarding prepaid connections, for the reason discussed above, **we find it appropriate to include the prepaid capacity of 160,930 gpd**. Dividing the 287,638 gpd total flow by the 300,000 gpd capacity results in a U&U of 95.88 percent for EWD capacity.

Order at 97 (emphasis added).

For the Sandalhaven transmission system, the Commission not only used prepaid connections in calculating the used and useful percentage, it also found the transmission to be 100% used and useful because it was the sole means of delivering wastewater flows to the EWD. Order at 98 (“Now that the WWTP has been decommissioned and the transmission system, which includes the force main, master lift station structure, and pumps, is the sole means of delivering flows to EWD for treatment, the transmission system shall be evaluated as a whole and be considered 100% U&U.”). As noted by the Commission, Order at 98, in the prior rate case the WWTP was considered 100% U&U for interim purposes, noting all flows were diverted to EWD for treatment. In the 2007 rate case the WWTP was found to be 77% U&U.³

¹126,708 gpd/300,000 gpd = 42.23% U&U – based on actual flows without prepaid connections

²(126,708 gpd + 160,930 gpd)/300,000 gpd = 95.88% U&U – based on actual flows plus prepaid connections flows

³ Order No. PSC-07-0865-PAA-SU, Docket No. 060285-SU at 18 (Oct. 29, 2007). Additionally, in the 2015 PAA Order, “[t]he WWTP was considered 100 percent U&U for interim purposes.

Accordingly, the Commission is not bound, and should not feel bound, to treat the EWD as 100% U&U. Citizens submit that the Commission should re-evaluate this analysis in light of the First District's remand and the effect of changing the EWD's capacity U&U from 95.88% to 42.23%.

CIAC

UIF concedes that the amount of prepaid connections booked to CIAC should be reduced to the extent the amount is disallowed. Citizens agree.

Re-opening the Record

UIF requests that, if the extent to which prepaid connections exceed the Five-Year/Five Percent Law cannot be established in the record, the record should be re-opened. UIF's Comments at 4. This is not appropriate for two reasons. First, if the Commission intended to reopen the record, UIF's comments are premature and should be stricken. If the record is re-opened, which is unnecessary, then the Commission should also provide an Order Establishing Procedure to seek input from the parties.

Second, the record in these proceedings clearly indicates that UIF cannot establish the extent to which prepaid connections exceed the Five-Year/Five-Percent rule. Prepaid connections are a financial reservation for capacity without a specific timeframe. *See* Transcript of Hearing Vol 7 at 1203. UIF Witness Seidman conceded that the "ready to serve" timeframe

However, all flows are now directed to EWD for treatment, so no U&U percentage is needed for the WWTP." Order No. PSC-16-0013-PAA-SU, Docket No. 150102-SU at 14 (Jan. 6, 2016). Further, at the time the parties indicated, "It is the intent of the Parties that the protested issues in the PAA Order shall have no precedential effect or value in any future rate case." Stipulation at 2.

was defined by the 5 year statutory growth period even though he attempted to make an unsupportable claim that used and useful should be applied differently for plant and force main such as the EWD interconnection.

Commissioner Polmann: I'm trying to understand "ready to serve." How far does that go to the customer? And is -- is there a standard or practice where the customer needs service and the utility has the notion that we need to be ready to serve, and you relate that back to time frame, and it's ready to serve within a reasonable period of time?

And I -- I just don't have an understanding how -- how that comes into play when you're evaluating whether you're ready or you're almost ready or you're not quite ready or you're planning to be ready or were thinking about getting ready.

I -- I'm just trying to get my head around how that concept related back to a commitment to the community. And I'm -- I'm not getting this time aspect. And then how you convert that -- I mean, you have a treatment plant that's -- that's built, and you're using it.

[Seidman]: Yes.

Commissioner Polmann: But are we ready to serve the community in which they're paying --

The Witness: Well, I -- I think the time commitment that you're talking about -- for instance, for the treatment plant, we do work with the margin reserve. So, that would be to say that the utility should normally be able to serve -- have enough capacity to serve the people who are there.

And what you would expect to have on -- in a growth period -- in our case, five years -- be able to relate to that and have capacity available along the way as that -- as that growth happens.

With regard to mains like, a force main, it's a little different circumstance. Like, in this case, with Sandalhaven, we don't have any choice. You know, we're -- we're using -- we're purchasing capacity for treatment. We have to get the effluent there.

We don't have any choice. You have a force main or you don't have a force main.

Transcript of Hearing Vol 7 at 1226. Accordingly, OPC requests that the Commission make its determination based on the voluminous record that is available. UIF has already had an opportunity to submit evidence in support of its positions, and the record was closed by the Commission. If the record does not include relevant information, then UIF failed to meet its burden in this docket and should not be allowed a second opportunity to make its case.

Appellate and Remand Rate Case Expense

UIF suggests that it would be erroneous to reduce the rate case expense based on allocation methodology. OPC disagrees. It is the Commission's policy and precedent that reasonable rate case expense can only mean expense related to issues on which the utility prevails on appeal. *See, e.g., In Re: Application for a Rate Increase in Marion County by Sunshine Utilities of Central Florida, Inc.*, Docket No. 900386-WU; Order No. PSC-94-0738-FOF-WU (June 15, 1994); *In Re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties*, Docket No. 950495-WS, Order No. PSC-96-1320-FOF-WS at 176 (Oct. 30, 1996) ("*Southern States Utilities*"). It is not the status of the Utility on appeal that is dispositive but, rather, whether the Utility prevails. This is the methodology used by the Commission and Florida courts when determining when to award attorney's fees, and that is the methodology that should be followed here. *See e.g. In Re: Application for a Rate Increase in Marion County by Sunshine Utilities of Central Florida, Inc.*, Docket No. 900386-WU; Order No. PSC-94-0728-FOF-WU at 9 (June 15, 1994) (relying on how courts deal with Attorney's Fees to determine Sunshine Utilities request for same). Additionally, as noted previously by the Commission, estimated additional expenses may not be awarded. *See Southern States Utilities* at

176 (noting that estimated appellate rate expenses were premature). Therefore, the estimated fees of \$9,690.00 and estimated costs of \$1,050.00 are not appropriate to consider at this time.

WHEREFORE, THE OFFICE OF PUBLIC COUNSEL ON BEHALF OF THE CITIZENS OF THE STATE OF FLORIDA requests this Commission:

1. Continue with its analysis removing prepaid connections from its calculations;
2. Reduce CIAC in an equal amount;
3. Make its determination on the voluminous record already available; and
4. Limit its award of appellate and remand rate case expense to actual expenses, not estimated, reduced by one-third because UIF did not prevail on one of three issues on appeal.

Respectfully Submitted,
J.R. KELLY, Public Counsel

/s/ A. Mireille Fall-Fry
A. Mireille Fall-Fry
Associate Public Counsel

Charles Rehwinkel
Deputy Public Counsel

Patricia A. Christensen
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

Attorneys for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE
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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 31st day of May, 2019, to the following:

Martin S. Friedman
Coenson Friedman, P.A.
766 N. Sun Drive, Suite 4030
Lake Mary, FL 32746
mfriedman@coensonfriedman.com

Patrick C. Flynn
Utilities, Inc. of Florida
200 Weathersfield Avenue
Altamonte Springs, FL 32714-4099
pcflyn@uiwater.com

Walter Trierweiler
Kathryn Cowdery
Florida Public Service Commission
2540 Shumard Oak Blvd., Room 110
Tallahassee, FL 32399-0850
wtrierwe@psc.state.fl.us
kcowdery@psc.state.fl.us

John Hoy
Utilities, Inc. of Florida
200 Weathersfield Avenue
Altamonte Springs, FL 32714-4099
jphoy@uiwater.com

Summertree Water Alliance
Ann Marie Ryan
11436 Windstar Ct
New Port Richey FL 34654
amr328@hotmail.com

Armstrong Law Firm
Brian P. Armstrong
P.O. Box 5055
Tallahassee FL 32314-5055
Brian@brianarmstronglaw.com

Seminole County
Edward de la Parte, Jr./Nick Porter
c/o de la Parte Law Firm
101 East Kennedy Blvd., Suite 2000
Tampa FL 33601
edelaparte@dgfirm.com
nporter@dgfirm.com

Seminole County
William S. Bilenky/Douglas P. Manson
c/o Manson Law Firm
1101 Swann Avenue
Tampa FL 33606
bbilenky@mansonbolves.com
dmanson@mansonbolves.com
bkucala@mansonbolves.com

/s/ A. Mireille Fall-Fry
A. Mireille Fall-Fry
Associate Public Counsel
Bar No. 758841

Charles Rehwinkel
Deputy Public Counsel

Patricia A. Christensen
Associate Public Counsel