

BEFORE THE FLORIDA 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 Sunshine Water Services Company

DOCKET NO. 20240068-WS

FILED: April 19, 2024

CITIZENS' EXPEDITED MOTION FOR MODIFICATION OF THE ORDER ESTABLISHING PROCEDURE

The Citizens of Florida, through the Office of Public Counsel (“Citizens” or “OPC”), pursuant to Uniform Rule 28-106.204(4), Florida Administrative Code, request the Florida Public Service Commission (“FPSC” or “Commission”) to modify certain deadlines established in Order No. PSC-2024-0259-PCO-WS issued on July 23, 2024 (“Order Establishing Procedure” or “OEP”). Following extended discussions with Sunshine Water Services Company (“Company”), the Company has agreed to support the proposed changes to the hearing schedule as supported below:

I. Background

Sunshine Water Services Company (“Company”) is a Class A utility providing water and wastewater service to customers in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties. On April 19, 2024, the Company filed a letter dated that same date requesting approval of a test year for rate increases in the Company’s service area.¹ Subsequently, on April 23, 2024, OPC filed a Notice of Intervention intervening in the docket pursuant to section 350.0611, Florida Statutes.²

¹ Document No. 02119-2024, PSC Docket No. 20240068-WS, *In Re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.*

² Document No. 02277-2024, PSC Docket No. 20240068-WS, *In Re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.*

Prior to initially intervening in the instant docket, OPC had also intervened in Docket Nos. 20240025-EI and 20240026-EI, involving separate petitions for rate increases by Duke Energy Florida, LLC. (“Duke”), and Tampa Electric Company (“TECO”), respectively,³ along with many other matters before the Commission.⁴ The Duke and TECO petitions represented the largest rate increases those companies had ever sought; increases which would affect millions of customers. At the time OPC initially intervened in the instant docket, OPC was still awaiting the results of OPC’s motions to either modify the schedules in the Duke and TECO dockets or to continue those dockets’ hearings in light of the strain that litigating simultaneous record-breaking petitions presented to OPC.⁵

In light of the uncertainty over whether OPC would get the scheduling relief it sought in the Duke and TECO cases, OPC was confronted with the prospect of litigating two unprecedented electric utility rate increase petitions while simultaneously intervened in a myriad of other matters. OPC was thus forced to make difficult determinations pursuant to section 350.0611, Florida Statutes, on how to allocate its limited resources in the public interest. In order to optimally provide sufficient representation to the millions of Duke and TECO customers affected by those companies’ petitions, OPC concluded it would have to withdraw from the Sunshine rate case

³ Document No. 00700-2024, PSC Docket No. 20240025-EI, *In Re: Petition for rate increase by Duke Energy Florida, LLC.*; Document No. 00852-2024, PSC Docket No. 20240026-EI, *In Re: Petition for rate increase by Tampa Electric Company.*

⁴ *See, e.g.*, Document No. 00855-2024, PSC Docket No. 20240099-GU, *In Re: Application for authority to issue and sell securities for 12 months ending December 31, 2024, by Tampa Electric Company.*; Document No. 00858-2024, PSC Docket No. 20230100-GU, *In Re: Application for authority to issue and sell Securities for 12 months ending December 31, 2024, by Peoples Gas System, Inc.*; Document No. 00859-2024, PSC Docket No. 20230127-GU, *In Re: Application for authorization to issue and sell securities, and to enter into agreements for interest rate swap products, equity products and other financial derivatives in 2024, by Chesapeake Utilities Corporation.*

⁵ Document No. 02230-2024, PSC Docket No. 20240025-EI, *In Re: Petition for rate increase by Duke Energy Florida, LLC.*; Document No. 02230-2024, PSC Docket No. 20240026-EI, *In Re: Petition for rate increase by Tampa Electric Company.*

docket and accordingly filed notice of such on May 7, 2024.⁶ OPC further determined that the public interest likewise required it to withdraw from other matters for the same reason.⁷ The Commission ultimately voted to reject OPC's Duke/TECO scheduling motions at its May 21, 2024, Commission conference,⁸ which unfortunately confirmed the Public Counsel's determination that the office must focus its limited resources primarily on the Duke and TECO petitions.

After months of extensive litigation, OPC has now completed or largely completed the work required by the Duke and TECO rate increase petitions. On August 21, 2024, the Commission voted to approve a settlement between OPC, Duke, and other intervenors resolving the Duke petition.⁹ Afterwards, OPC participated in the Commission's hearing for the TECO rate increase petition, which ended on August 30, 2024. While post hearing matters requiring OPC's attention remain in the TECO case, the Commission's acceptance of the Duke settlement and the completion of the TECO hearing allows OPC to intervene in this matter again, which occurred earlier today, September 19, 2024.¹⁰

While OPC is once again seeking to implement its public interest determination to provide representation to Sunshine's customers, the fact that OPC had to devote its resources to Duke and

⁶ Document No. 02835-2024, PSC Docket No. 20240068-WS, *In Re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.*

⁷ See, e.g., Document No. 02814-2024, PSC Docket No. 20240099-GU, *In Re: Application for authority to issue and sell securities for 12 months ending December 31, 2024, by Tampa Electric Company.*; Document No. 02811-2024, PSC Docket No. 20230100-GU, *In Re: Application for authority to issue and sell Securities for 12 months ending December 31, 2024, by Peoples Gas System, Inc.*; Document No. 02845-2024, PSC Docket No. 20230127-GU, *In Re: Application for authorization to issue and sell securities, and to enter into agreements for interest rate swap products, equity products and other financial derivatives in 2024, by Chesapeake Utilities Corporation.*

⁸ Document No. 03412-2024, PSC Docket No. 20240025-EI, *In Re: Petition for rate increase by Duke Energy Florida, LLC.*; Document No. 03415-2024, PSC Docket No. 20240026-EI, *In Re: Petition for rate increase by Tampa Electric Company.*

⁹ Document No. 08846-2024, PSC Docket No. 20240025, Transcript, Vol. 7, p. 1377. Sep. 5, 2024.

¹⁰ See, Citizens' Notice of Intervention, dated September 19, 2024, in Docket No. 20240068-WS, found at Document No. 09087-2024.

TECO’s petitions means OPC is re-intervening in the instant docket after crucial time has passed. At the time of this Motion’s filing, as currently set out in the OEP, OPC will have only 6 weeks to submit its intervenor testimony and exhibits. Therefore, OPC is requesting extending the aforementioned and other deadlines so that OPC can provide Sunshine’s customers the advocacy that they deserve.

II. Requested Extension Dates

The chart below shows the current deadlines established by the OEP and, where applicable, the dates that OPC is requesting extensions for:

Deadline	Current Date	Requested Date
Utility testimony/exhibit	June 28, 2024	N/A
Intervenor testimony/exhibit	October 31, 2024	December 1, 2014
Staff testimony/exhibit	November 7, 2024	December 9, 2024
Rebuttal testimony/exhibit	December 5, 2024	December 20, 2024
Prehearing statements	January 2, 2025	January 15, 2025
Discovery deadline	January 16, 2025	N/A
Prehearing conference	January 23, 2025	N/A
Provision of exhibits	February 3, 2025	N/A
Hearing	February 11-13, 2025	N/A
Briefs	March 14, 2025	N/A

III. Standard

Per Uniform Rule 28-102.604(4), Florida Administrative Code, motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good

cause for the request. None of the deadlines that OPC seeks to extend have expired. Therefore, the only issue is whether good cause exists for the extensions. As discussed below, good cause does exist, so the Commission should extend the deadlines OPC is requesting extensions for.

IV. Good Cause Justification

In general, “an intervenor must take the case as he finds it.”¹¹ Nonetheless, hearing officers have broad discretion when establishing procedural deadlines and when ruling on motions for extension of time.¹² OPC cannot currently take advantage of the full discovery period established by the OEP due to its public interest determination to withdraw and focus its limited resources on the Duke and TECO petitions. By extending OPC’s requested deadlines, the hearing officer will afford OPC the ability to discharge its statutory obligations and the opportunity to conduct appropriate discovery to put together the best case possible on behalf of Sunshine’s customers, including intervenor testimony.

Intervenor testimony almost always represents an intervenor’s best chance to present (prefiled) responsive direct testimony and exhibits in any given docket. This means that other discovery obtained subsequent to the intervenor testimony filing date will likely only be entered into evidence through agreement of the parties or through cross-examination challenging the assertions of a utility witness at the hearing. Expert witnesses in water and wastewater cases are also increasingly hard to find, and OPC has been ranging far afield in its search. The new forever chemical mitigation requirements associated with the *pro forma* for the proposed projects in Orangewood further aggravate this issue, likely necessitating the identification of, and hiring of, a new expert to handle these important new requirements for the first time by this Commission. Neither OPC nor the PSC has experience or expertise in these matters and the time requested is

¹¹ *Litvak v. Scylla Props., LLC*, 946 So. 2d 1165, 1174 (Fla. 1st DCA 2006).

¹² *See, e.g.*, Section 120.569(2)(o), F.S.; Rules 28-106.206 and 28-106.211, Florida Administrative Code.

required to address them. The OEP affords parties 20 days to serve discovery responses,¹³ which means OPC has only enough time to conduct at most two rounds of discovery before having to submit its testimony. This is an insufficient amount of time for the OPC to find all the experts it needs, for any expert to fully review Sunshine’s filings, guide discovery, and to draft and finalize testimony, and for OPC to conduct depositions related to such.

The extended dates that OPC is requesting are reasonably based on modest extensions of time. Affording intervenor’s an extra month from October 31, 2025, to December 1, 2025, will at least double the amount of rounds of written discovery available to OPC while not delaying the final hearing in this matter or significantly delaying any other material deadline. The extended dates also provide Staff and Sunshine more time to conduct their own discovery, if any, and to submit their testimony and rebuttal testimony, respectively. The proposed January 15, 2024, prehearing statement due date is intended to bring the deadline for prehearing statements much closer to the hearing date, while more closely coinciding with the discovery deadline. The current due date for prehearing statements is premature in that it does not allow sufficient time to consider ongoing discovery, depositions, the discovery deadline, or the hearing date. This substantially increases the probability that intervenors will only be able to take placeholder positions in the prehearing statements. As further evidence that there is no prejudice or delay to the Company, they support OPC’s requested changes to the internal deadlines in this case, which do not impact the original hearing dates. There is no prejudice to Commission Staff, as their testimony deadline is similarly extended and is not impacted by OPC’s filing. ***It should be noted that the Company agreement with the OPC on the schedule is conditioned upon the OPC stipulation with the***

¹³ Document No. 07779-2024, PSC Docket No. 20240068-WS, *In Re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Sunshine Water Services Company.*

Company that the OPC will not object to Sunshine filing in its rebuttal testimony updated cost and contract information related to the pro forma adjustments.

Moving the Prehearing Statement due date to a date within 24 hours of the discovery deadline instead of 14 days prior is more consistent with past rate case OEP schedules filed with the Commission. Leaving the currently scheduled prehearing statement due date in place will, as noted above also most likely result in an initial filing of tentative positions that are dependent upon outstanding discovery. As it is, the current discovery deadline is already weeks ahead of where it is normally set, and is at odds with the concept that the Commission should act upon the most recent information available. While OPC objects to the current discovery deadline date, in the spirit of compromise and to promote judicial economy, OPC is not seeking revision to the current discovery deadline. And as noted herein, the Company supports OPC's newly proposed due date for Prehearing Statements. The proposed date bears a rational relationship to the discovery deadline, will minimize the number of last-minute adjustments, promote certainty, and hopefully lead to the timely stipulation of issues, and the potential excusal of witnesses prior to hearing.

OPC's intervention is timely, and the proposed adjustments to the prehearing schedule are necessary to avoid further prejudice to customers. This request is entirely based upon OPC's duty to provide adequate representation of Florida's customers, as is our statutory responsibility to promote rates that are fair, just, and reasonable.

V. Conclusion

This Motion will not result in undue delay but is the unavoidable result of the unprecedented dual filings and pancaked rate case schedules for the Duke and TECO dockets. There are currently only two parties to this docket. OPC gratefully acknowledges the unprecedented support by the Company for OPC's Motion and suggests that cooperative actions

by the litigants should be encouraged and rewarded. Granting the Motion will not impose delay in the hearing, or a burden to the Company or the agency (Commission). Granting the Motion will provide reasonable relief of scheduling pressures caused by multiple filings of major rate cases during 2024 and other litigation factors outside of OPC's control. Due to the exigencies described above, and the unanimous support thereof, the parties respectfully request an expedited favorable ruling on this Motion.

WHEREFORE, the Citizens hereby request the Commission grant this Motion for Modification of the Order Establishing Procedure.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 20240068-WS

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 19th day of September 2024, to the following:

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