

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

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DOCKET NO. 20240068-WS

**SUNSHINE WATER SERVICES COMPANY’S ARGUMENTS IN OPPOSITION TO  
OPC CONTESTED ISSUES AND BRYAN GONGRE TESTIFYING**

Sunshine Water Services Company (“Utility”) by and through its undersigned counsel, files this response to OPC’s Contested Issues 1 and 2, and the request to compel the appearance and testimony of Bryan Gongre at the final hearing.

**Contested Issue 1.** Is the overall value to a customer provided by the Utility satisfactory, and, if not, what systems have value issues and what action should be taken by the Commission?

Section 367.081(2)(a)1, Florida Statutes states:

The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. In every such proceeding, **the commission shall consider the value and quality of the service and the cost of providing the service**, which shall include, but not be limited to, debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service. However, the commission shall not allow the inclusion of contributions-in-aid-of-construction in the rate base of any utility during a rate proceeding, nor shall the commission impute prospective future contributions-in-aid-of-construction against the utility’s investment in property used and useful in the public service; and accumulated depreciation on such contributions-in-aid-of-construction shall not be used to reduce the rate base, nor shall depreciation on such contributed assets be considered a cost of providing utility service. (e.s.)

The element of value is part of the quality of service evaluation, hence, “value and quality of service.” If value was intended by the Legislature to be a separate concept, the phrase would have been “value, quality of service, and cost of providing service.” This is a basic tenant of

statutory construction. SWS knows of no Commission order in a water or wastewater case where the concept of value is addressed. So, OPC is asking this Commission to establish a novel ratemaking principle that has not previously been raised in the twenty-five years that phrase has been in the statute<sup>1</sup>. Further, there is no statutory or established Commission criteria for determining value as a separate ratemaking concept. Value, as OPC would like it to be evaluated, is a subjective concept, and further, there is no testimony in the record of this case supporting this concept or the criteria needed for its evaluation by the Commission.

**Contested Issue 2.** Are the resulting rates affordable within the meaning of fair, just, and reasonable pursuant to Sections 367.081 and 367.121 Florida Statutes?

Affordability is not mentioned anywhere in Chapter 367, Florida Statutes. Under OPC's theory, the statutory requirement in Section 367.081(2)(a)1, Florida Statutes for the Commission to consider "the cost of providing the service, which shall include, but not be limited to, debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service" would be meaningless if an arbitrary or overriding affordability criteria is created.

As this Commission stated in Order No. PSC-2009-0411-FOF-GU:

The statutory principles for determining the appropriate rate of return for a regulated utility were set forth by the U.S. Supreme Court in Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591 (1944) and Bluefield Waterworks & Improvement Company v. Public Service Commission of West Virginia, 262 U.S. 679 (1923). These decisions define the fair and reasonable

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<sup>1</sup> To SWS's knowledge, none of the current OPC's predecessors since 1980 has sought to expand the subjective nature of that term into a ratemaking principle.

standards for determining rate of return for regulated enterprises. Namely, these decisions hold that the authorized return for a public utility should be commensurate with returns on investments in other companies of comparable risk, sufficient to maintain the financial integrity of the company, and sufficient to maintain its ability to attract capital under reasonable terms.

The Commission has previously addressed the concept of affordability in a water and wastewater rate case only in the context of considering consolidated rates. In Order No. PSC-2009-0385-FOF-WS, the Commission found that:

We believe that affordability is subjective in nature - what constitutes affordability to one person may represent unaffordability to another person (P. 124).

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Implicit in the rates approved by the Commission in all cases is the determination that the resulting bills are affordable (P. 126).

OPC's unprecedented attempt to interject the concept of affordability is unnecessary and redundant given the Commission's finding that implicit in all rates approved by the Commission is a determination of affordability. Isolation of this issue as a separate, distinct, and standalone concept as OPC suggests – particularly in a case with no discernible or ascertainable testimony in support, even from OPC's own witnesses – is unnecessary and superfluous.

Certainly, the Commission was correct when it stated that "... affordability is subjective in nature." The subjectivity of any such determination is exacerbated in a situation like the instant proceeding, where SWS' approximately 34,000 water and 30,000 wastewater customers throughout the state are certainly of varying economic means. Even customers who live in close proximity to one another have varying financial means. The isolation of this issue is unnecessary as there is no such testimony or other evidence in this case, and would therefore require on-point offering of "opinions" by presumed "experts on affordability" at the latest stages of the proceeding. Particularly given its subjective nature, OPC's raising of this issue deprives the Commission of

addressing the issue, if at all, implicitly within the rates it ultimately approves and instead creates an expensive and unprecedented ancillary issue that necessitates opinions of “experts on affordability”, which will then require specific and on-point discovery, subsequently rebutted by opposing “experts” on-point. This abbreviated and compressed process will ultimately require the Commission to then accept, reject, and weigh such testimony for a concept which the Commission has previously appropriately determined is implicit within all of the other issues typically traditionally considered in rate cases.

The fact that this concept is not addressed within the testimony of any witness is neither academic nor some procedural nicety. If OPC’s argument is accepted, any finding of fact, whether explicitly or implicitly made in the PSC’s Order, will necessarily be extracted from the testimony of witnesses who are unable to give the topic fair treatment. If the concept of affordability is suddenly deemed to be at issue in this case, and the party’s adverse positions somehow divined by reading between the lines of prefiled testimony from witnesses who were not even aware they were addressing or contributing to consideration of the issue at the time, effective cross-examination is impossible. Indeed, any such attempt to cross-examination would just provide an opportunity for the witness to testify directly on the subject of affordability for the first time – and due process cannot be afforded by such a scenario. Likewise, the rebuttal testimony doesn’t address the issue of affordability because the issue wasn’t addressed in the testimony that is being rebutted, yet OPC maintains that somehow the Commission can sort through the factual record and extract sufficient evidence on which to base a finding of fact so that the issue of affordability can be adjudicated.

This Commission has traditionally addressed how rate increases impact customers of lower economic means in the development of the rate structure, by considering in the least expensive

consumption tier that amount of water that is determined to be essential. There has likewise been no testimony regarding affordability in rate design by any witness in this case.

**Compelling Bryan Gongre's Testimony.**

OPC, for the first time at the prehearing conference, requested that it be allowed to subpoena Bryan Gongre, who is an employee of SWS, to compel his attendance at the final hearing. This was done without the courtesy of prior notice to SWS or Commission staff, leaving neither prepared to address that highly unusual and late-breaking request. In fact, OPC has not thus far identified even one instance where this maneuver was allowed by this Commission in the past.

Mr. Gongre's testimony is ostensibly to address the Wekiva WWTP. Even though OPC questioned Seán Twomey in his October 30, 2024, deposition about the Wekiva WWTP, and had Mr. Twomey identify five separate exhibits on the subject<sup>2</sup>, OPC waited approximately three months, on the last day of the discovery deadline, to depose Mr. Gongre, despite multiple intervening rounds of discovery being asked and answered.

The history of the Wekiva WWTP<sup>3</sup> is not a subject that arose late in this proceeding. Details of its operations for the past several years were disclosed in the engineering documents that were filed with the Application. The WWTP was the subject of discovery requests of OPC and Commission staff. Instead of presenting its own witness on this subject, which is the typical method to address issues, in an attempt to compensate for its omission to have a witness, OPC seeks the novel and unprecedented action of compelling a non-witness employee of SWS to testify at the final hearing.

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<sup>2</sup> See pages 130-133 and others of Mr. Twomey's October 30, 2024 deposition, and Exhibits 18-22.

<sup>3</sup> The Wekiva WWTP is currently in compliance with DEP rules.

OPC has had ample opportunity over the many months of the rate case process to-date to request, review, and analyze information related to the topics piquing their interest in this case, and to present witnesses on those topics. Allowing the calling of a new witness for the final hearing at this late stage would set a troubling precedent for future rate case proceedings by effectively extending the discovery process beyond its permitted timeline and creating serious due process concerns.

WHEREFORE, Sunshine Water Services Company requests the Prehearing Officer enter an Order that OPC's Contested Issues 1 and 2 are not legitimate ratemaking issues, and that OPC's request to compel the testimony of Bryan Gongre is untimely and improper.

Respectfully submitted this 31st day of January,  
2025.

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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 to the following parties this 31<sup>st</sup> day of January, 2025:

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