

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 Utilities, Inc.
of Florida**

DOCKET NO. 160101-WS

**UTILITIES, INC. OF FLORIDA'S RESPONSE IN OPPOSITION TO OFFICE OF
PUBLIC COUNSEL'S MOTION TO ENLARGE DISCOVERY LIMITS**

UTILITIES, INC. OF FLORIDA. ("UIF"), by and through undersigned counsel and pursuant to Rule 28-106.204, Fla. Admin. Code, hereby files its Response in Opposition to OFFICE OF PUBLIC COUNSEL'S ("OPC") Motion to Enlarge Discovery Limits ("Motion"), and as grounds therefore states as follows:

1. In Order No. PSC-16-0558-PCO-WS issued December 14, 2016 ("OEP"), and subsequently modified, the Commission established a maximum of 500 interrogatories that one party may serve on another party. OPC is now asking that this Commission take the unprecedented action of extending that maximum by 50% to 750 interrogatories.

2. With the service of OPC's Eleventh Interrogatories, UIF advised OPC that even though it had exceeded the 500 maximum, it would answer that set, but none thereafter. As of OPC's Eleventh Interrogatories, OPC has served 562 interrogatories, already 10% over the maximum. See the attached Schedule showing the calculation.

3. OPC tries to justify its need for more interrogatories by what it calls a "large, complicated case". In reality, OPC wants to serve more interrogatories because it did not make good use of the 500 it had. For instance, in Interrogatory 257, OPC is asking questions about whether \$460 and \$544 invoices were recurring expenses (and presumably amortized over 5 years

if not – a couple of hundred dollar issue). That is just one recent example. OPC's Interrogatories are replete with questions about insignificant amounts.

4. OPC was not judicious in its interrogatories and now seeks reprieve from this Commission for its oversight in focusing on blades of grass instead of the forest. It asked questions without regard to materiality. The purpose of limitations in discovery requests is to require parties to be more selective in submitting interrogatories. See, *Amendments to the Fla. Rules of Civil Procedure (Two-Year Cycle) & Fla. Rule of Appellate Procedure 9.110*, 2003 Fla. LEXIS 2333 (Fla. 2003).

5. OPC's attempt to place the blame on UIF for asserted "deficient" responses is misplaced. For instance, OPC apparently believes that Florida Rule of Civil Procedure 1.370(a) requires a party denying a Request for Admission to explain its denial. OPC seeks to use Requests for Admissions as a substitute for interrogatories. They are separate discovery tools with separate purposes. The clear reading of this Rule is that an explanation is only required when a party cannot either admit or deny a Request for Admission. OPC cannot rely upon its mistake in not understanding this procedural rule to justify its request for service of additional interrogatories. As stated in the treatise, *Florida Civil Practice Before Trial* § 16.77 (2014):

Requests for admission must be in writing and must set forth separately, each fact on which an admission is requested. The requests should be phrased simply and directly so that they can be admitted or denied without explanation. A request for admission should be phrased so that it can be answered "yes," "no," "I do not know," or by a simple explanation why it cannot be answered.

6. By way of example, in the pending Gulf Power rate case, interrogatories were limited to 500, in the K W Resort Utility Corp. rate case the number of interrogatories was limited to 500, and in the Aqua Utilities Florida, Inc. rate case the number of interrogatories in the protested case was limited to 350 (since OPC had already served interrogatories in the PAA portion

of the case). To allow a party to serve virtually an unlimited number of interrogatories would be to create a precedence this Commission would be saddled with for years to come, and would be contrary to the purpose of such limitations to require parties to be more selective in submitting interrogatories.

WHEREFORE, UTILITIES, INC. OF FLORIDA respectfully requests this Commission issue an Order denying OFFICE OF PUBLIC COUNSEL'S Motion to Enlarge Discovery Limits.

Respectfully submitted this 25th day of March,
2017, by:

COENSON FRIEDMAN, P.A.
766 North Sun Drive, Suite 4030
Lake Mary, FL 32746
Telephone: (407) 322-8000
Fax: (407) 878-2178
mfriedman@coensonfriedman.com

/s/ Martin S. Friedman
Martin S. Friedman, Esquire
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-mail to the following parties this 25th day of March, 2017:

Erik L. Sayler, Esquire
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
sayler.erik@leg.state.fl.us

Walter Trierweiler, Esquire
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
wtrierwe@psc.state.fl.us

/s/ Martin S. Friedman
Martin S. Friedman