

BEFORE THE 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 TO SUMMERTREE WATER
ALLIANCE'S AMENDED PETITION TO INTERVENE**

Applicant, UTILITIES, INC. OF FLORIDA ("UIF") by and through its undersigned attorneys and pursuant to Order No. PSC-17-0143-PCO-WS ("Order") files this Response to the Summertree Water Alliance's ("SWA"), and Anne Marie Ryan's Petition to Intervene, and states as follows:

Summertree Water Alliance

1. The law on standing of associations to intervene in administrative proceeding is well settled and has been set forth in the Order. However, the Amended Petition fails to even make allegation sufficient to establish standing, even if SWA had an opportunity to prove standing (as opposed to merely alleging it) it has woefully failed to do so. The majority of the Petition rehashes the SWA's and Ms. Ryan's erroneous accusations going to the purported merits of their claim, including statements she attributes to the undersigned.

2. At this point in the proceeding it is impossible for SWA to meet any of the three prongs of the test for associational standing.

3. The initial criteria that must be met for an association to have standing in an administrative proceeding is that a "substantial number of an association's members may be substantially affected by the Commission decision in a docket". That criteria not only has to be

alleged but **the association has the burden to prove that fact through evidence adduced at hearing.** *Palm Beach County Environmental Coalition v. Department of Environmental Protection*, 14 So.3d 1076 (Fla. 4th DCA 2009). *Last Stand v. KW Resort Utilities Corp.*, Final Order, OGC Case No. 14-0393 (FDEP Feb. 24, 2016) where DEP ruled that the association in that proceeding did not have standing as it “did not present evidence showing that a substantial number of its members’ substantial interests potentially could be injured.”¹ This Commission cannot presume the requirements for standing have been met.

4. SWA’s efforts to intervene are “too little too late”. All prefiled testimony has been filed and there is none that proves that a “substantial” number of the SWA’s members will be substantially affected. In fact we have no idea how many members SWA has, and at this point in the proceeding SWA has no way to prove that.

5. In addition, there is no evidence of SWA’s “general scope of interest and activity”, which is required to meet the second prong of the test. Again, at this point in the proceeding SWA has no mechanism with which to prove through the introduction of evidence that critical fact.

6. The fact that some associations in the past have been allowed to intervene in prior Commission dockets does not give automatic standing to every association in every docket. We do not know in those prior cases whether the association other parties opposed it, and whether the association intervened sufficiently early for the facts regarding standing to be vetted. It is doubtful that in any of those instances the association intervene after the close of discovery. UIF’s due process right will be violated by assuming SWA has standing.

¹ See pages 90 through 94 of the Recommended Order attached as Exhibit “A” to the Final Order. A copy of this Final Order can be found in Docket No. 150071-SU.

7. There is no basis to sympathize with SWA's late filing of its Petition to Intervene. Ms. Ryan, who apparently has some unspecified position with SWA, has been aware of this proceeding since it was filed. In fact, Ms. Ryan started filing letters in this docket as early as July 1, 2016 even before the MFRs were filed. Had SWA filed its Motion in a timely manner the parties through discovery could have thoroughly vetted.

8. If this Commission mistakenly allows SWA to intervene, it must make it clear that SWA will be held to the same standards and subject to the same restrictions as the other parties. For instance, no one can testify on behalf of SWA since SWA has not filed any prefiled testimony, which would include Ms. Ryan. To do otherwise would be to violate UIF's due process rights.

WHEREFORE, based upon the facts and argument set forth above, Utilities, Inc. of Florida, respectfully requests this Commission deny the Summertree Water Alliance's Motion to Intervene.

Ann Marie Ryan

9. Ms. Ryan is a customer of UIF and as such she meets the standing test espoused in *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2nd DCA 1981).

10. However, Ms. Ryan should be careful what she asks for. As a party she cannot testify at the final hearing because she has not prefiled testimony. She cannot have it both ways.

WHEREFORE, Utilities, Inc. of Florida, acknowledges Ms. Ryan's right to intervene giving her the rights of an intervenor, and being subject to the same requirements and limitation as the other parties. In other words, Ms. Ryan must be treated as any other party and

cannot present any testimony or other evidence that has not been prefiled. To do otherwise would be a violation of UIF's due process rights.

Respectfully submitted this 27th day of
April, 2017

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/s/ Martin S. Friedman
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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 this 27th day of April, 2017, to:

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