

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for Rate 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 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Motion to Dismiss Application for Water and Wastewater Rate Increase

Filed: May 2, 2017

The Summertree Water Alliance and Mrs. Ann Marie Ryan, Petitioners, by and through their counsel, file this motion to dismiss the application for increased water and wastewater rates by Utilities, Inc. of Florida (UIF) in this proceeding and in support of such dismissal state as follows:

1. The owner of UIF, Corix, Inc., is the latest of multi-billion dollar conglomerates that have purchased UIF. Corix did not disclose to the Commission its intention to file rate increase applications virtually immediately after seeking Commission approval to purchase UIF. Yet only weeks after UIF was acquired by Corix, UIF filed an application to increase the rates paid by members of the Summertree Water Alliance and Mrs. Ann Marie Ryan. Since that initial rate increase, UIF has steadfastly pursued rate increase after rate increase culminating in this proceeding.
2. UIF has failed miserably to substantiate completion of nearly \$37 million of additional plant in service which it seeks to include in rate base. UIF's rate increase application, largely based upon UIF's alleged intent to replace plant, lines and associated facilities in two pro forma test years ending December 31, 2017, suggests that it should be rewarded with what began as \$7 million and now is approximately \$7.6 million (deposition testimony of John Hoy at pages 80-81) in additional revenue from its customers each year.
3. By test year letter dated April 28, 2016, UIF notified the Commission of its intent to file an application for increased rates based upon an historic 12/31/2015 test year which is now more than 16 months stale. UIF largely justified its \$7 million revenue increase and associated rates by identifying approximately \$29,966,300 of new investments which it alleged UIF would make in UIF plant, lines and associated facilities by the end of 2017. Exhibit 51 offered in the rebuttal testimony of Patrick Flynn would raise the pro forma investments sought for rate base inclusion to \$36,850,000.
4. After months of processing the pending application for the largest revenue increase in UIF's history, after months of UIF ignoring repeated requests by the Office of Public Counsel for documents establishing that UIF had actually made the nearly \$30 million of pro forma investments suggested in UIF's test year letter, and only a few weeks before the evidentiary hearing is scheduled to begin, UIF finally provided some pro forma investment information via an exhibit to the rebuttal testimony of an UIF witness (Ex. 50 of Patrick Flynn). Exhibit 50 consists of over 900 pages of documents intended to suggest that UIF now intends to spend not \$30 million, but \$36,850,000 on its pro forma investments, or nearly \$7 million more than the prior estimate in its test year letter.
5. The Commission must take notice of the fact that according to Exhibit 51 of UIF witness Flynn's rebuttal testimony (also only recently received), UIF currently has placed into service only

\$4,511,000 of the \$36,850,000 of projected pro forma projects which it is asking the Commission to include in its rate base.

6. The vast majority of the anticipated but not yet completed projects identified by UIF would involve replacing or upgrading existing plant, lines or associated assets during the pro forma test years ending 12/31/2017. A total of **\$32,341,000 worth of the \$36,850,000 of UIF's projected projects was not completed and placed into service as of the date of UIF's recent disclosure in Exhibit 51.**
7. Exhibit 51 establishes that UIF has placed into service only approximately 13% of UIF's projected plant in service additions. As noted below, the Commission cannot establish rate base and determine UIF's revenue requirement by including these incomplete projects in rate base without removing costs which they will lower and prior expensed investments which they will replace.
8. UIF has failed to disclose information to the Commission necessary to the Commission's determination of a proper revenue requirement. Among the 900 plus pages of Exhibit 50, at the very end (beginning on page 915), is the study dated very recently, April 2, 2017, upon which UIF apparently relies to justify implementation of an asset management system, geographic information system and other systems designed to improve UIF's decision-making for plant investments and utility operations.
9. UIF is obligated to manage its water and wastewater systems properly.
10. UIF is obligated to make prudent decisions as relate to investments in its facilities which UIF intends to include in rate base.
11. UIF is obligated to ensure that the amount it invests in its facilities are reasonable.
12. UIF is obligated to ensure that expenditures made to operate its facilities are prudent.
13. UIF is obligated to ensure that the amount it spends to operate its facilities are reasonable.
14. Where services or materials are provided by an affiliate of UIF, UIF's burden to establish that such services rendered are of high quality and at reasonable costs is even higher.
15. UIF has a duty to provide high quality service to its customers, at the lowest reasonable costs.
16. The obligations and duties listed above are axiomatic for any utility regulated by the Public Service Commission.
17. UIF must prove to the Commission in this proceeding that it has met these obligations and duties; it has not.
18. UIF admits that through and including the second quarter of 2017, it does not have management policies, programs and systems in place which would have permitted UIF to make better investment decisions and reduce operating costs in the past. Such systems include an asset management system, predictive maintenance programs, preventive maintenance programs, geographic information systems, sewer system overflow monitoring and reporting systems (SORP), a computerized maintenance and monitoring system (CMMS), a capacity management and operating maintenance system (CMOM) and other policies, programs and systems. None of these policies, programs or systems are revolutionary. They have been available to prudent utility managers for many years. UIF management is aware that geographic information systems have been available for "quite a while" (deposition of John Hoy at page 55). UIF management never implemented a formal capital improvement program or planning process despite spending \$100 million from 2005 through 2015 on plant in service (deposition of John Hoy at pages 50-52

19. Mr. Patrick Flynn states in his rebuttal testimony (page 3): “Exhibit PCF-50 describes UI’s Operations Management System (OMS) including an overview of asset management strategy, a discussion of the objectives and scope of an OMS, a description of the GIS platform (ESRI ArcGIS) and the benefits of a Computerized Maintenance Management System (CMMS). Specifically, these new field technicians will be tasked with annual hydrant maintenance, flushing dead end lines on a cyclical basis, drawdown test of lift stations, distribution valve exercising, annual testing of pressure relief valves on hydro-pneumatic tanks, manhole inspections, and geospatial location of all asset types including both linear assets and vertical assets. In the absence of these new field technicians, the Utility will not be able to take a proactive approach to asset maintenance in a comprehensive way, but rely instead on reactive maintenance, which negatively impacts the delivery of water and sewer service in a reliable way.” This testimony constitutes an admission that UIF has not heretofore taken a proactive approach to asset maintenance in a comprehensive way, but instead UIF has relied on reactive maintenance which has long negatively impacted the quality and cost of services UIF provides to its customers.
20. UIF has admitted that its asset system management expert, Black & Veatch, has been performing analyses of the type of utility asset management systems he describes, or the need therefor, for many years. (Flynn deposition at page to be determined). However, UIF still has not implemented such a system or any of the related policies, programs or systems and will not do so until the second quarter of 2017 (deposition testimony of John Hoy at pages 58-62, 150, 151).
21. According to UIF rebuttal witness Patrick Flynn (page 3), there is “... a critical need to address preventative and predictive maintenance activities in these systems in order to improve the delivery of water and sewer service, extend the life of existing assets, comply with regulatory requirements, and reduce service interruptions caused by equipment failures.” This testimony constitutes an admission that prior UIF management processes have resulted in water and sewer service in need of improvement, asset lives shorter than could have been achieved with good maintenance and management practices and more service interruptions from equipment failures than would have been experienced by UIF’s customers if UIF had long ago implemented the asset management and other policies, programs and systems it now suggests may be available in the second quarter of this year.
22. UIF customers should not be penalized with higher rates by UIF management’s decision not to install appropriate asset management systems and other policies, programs and systems and instead to wait until the second quarter of 2017 to implement the policies, programs and systems necessary to rectify UIF’s poor management practices and decisions in the past.
23. UIF has failed to remove from rate base the amount of prior investments made due to its poor past decision-making.
24. UIF admits that its investment decision making will be improved when the policies, programs and systems are implemented. UIF admits that when the new policies, programs and systems are implemented in the second quarter of 2017, it will conduct long term capital planning rather than making reactive investment decisions like it has in the past, thus reducing its investment needs and improving service to customers. This is an admission that past investment decisions were lacking; resulting in higher plant in service costs and thus higher rate base than were necessary. Yet UIF has not identified or even attempted to identify how much of its prior investment should be excluded from or removed from rate base so that customers will not be forced to pay for excessive investments by UIF.

25. UIF has failed to remove from the test year revenue requirement expenses which a UIF witness admits were expensed to repair or fix facilities which now have been replaced, or allegedly will be replaced as pro forma projects; thus such expenses will not recur (deposition testimony of Patrick Flynn, page to be determined). These expenses must be removed from the test year as such expenses will not recur since new plant allegedly will be placed into service to replace such facilities based upon UIF implementing improved management policies, programs and systems which have been available for years.
26. UIF President John Hoy admits as follows: "And we believe that, other than a few things that we concede are potential reductions, that the utility is entitled to get – I go back to the objective that says that we have the opportunity to earn our allowed return" (deposition of John Hoy at page 142). However, UIF never has disclosed to the Commission or the parties the reductions UIF's President is conceding should be made or quantified the amount of such reductions such as those described earlier and later in this motion.
27. UIF admits that its facilities maintenance practices and associated costs will improve when the new policies, programs and systems are implemented in the second quarter of 2017. UIF admits that past operations and management decisions to not implement standard predictive and preventive maintenance, CMMS, sewer system overflow programs and other operations systems resulted in more frequent repairs on an as needed basis and that as a result asset maintenance was conducted on an ad hoc basis; evidence of imprudent utility management and operations practices resulting in higher costs included in UIF's test year operating expenses which were not reasonably incurred and which shall not recur.
28. These UIF admissions confirm that UIF's future operating costs will be lower (see deposition testimony of Patrick Flynn at page to be determined). However, UIF has not reduced the amount of test year operating expenses upon which it now asks the Commission to establish its revenue requirement. UIF must remove these excessive costs from its revenue requirement.
29. UIF has admitted it does not expend funds which UIF knows would result in improved service to customers unless and until UIF first is authorized to be remunerated for such expenditure in the form of higher rates. See, rebuttal testimony of UIF Witness Flynn, pages 3-4, where UIF's witness states: "If UIF proceeds to hire the technicians without the additional revenue, the customers would reap the benefits without providing proper remuneration for the additional value generated by their work product."
30. UIF has presented only evidence tending to establish increased expenses and investments to the exclusion of any evidence which would result in a lower revenue requirement. During the deposition of a UIF Vice President and in his presence, UIF counsel admitted that UIF does not "voluntarily" provide information or documents to the Commission or the parties establishing lower costs or reduced investment needs unless such information or documents are requested through the formal discovery process (Deposition of Patrick Flynn at page to be determined). UIF cannot be allowed to present only evidence tending to support rate increases and require the Commission and parties to bear the burden of asking the right questions to find evidence to the contrary. UIF has the obligation to produce information and documents which it knows are relevant to establishing its revenue requirements for the test years and beyond. In fact, such information is required to be incorporated into UIF's minimum filing requirements and UIF admits that it has not done so.

31. UIF has presented no evidence as to the associated expense and investment savings resulting from its management improvements. UIF has admitted that it did not receive from Black & Veatch, its asset management expert, any information establishing, projecting or otherwise quantifying the savings in operating expense or reduced capital expenditures if the asset management system, CMMS, geographic information system and other related programs (predictive maintenance, preventive maintenance) are implemented (see deposition of Patrick Flynn at page to be determined). UIF made no adjustment to rate base or expenses to make the test year more representative of UIF's revenue requirements after such implementation.
32. Thus UIF expenses and investments included in the revenue requirement are not representative of UIF's revenue needs in the future.
33. Also, UIF has not demonstrated prudent management practice as it is imperative that investment decisions be based upon cost/benefit analysis, with the costs and benefits to the customers weighed equally to the costs and benefits to UIF's owner when decisions are made (see deposition of Patrick Flynn at page to be determined).
34. UIF has failed to meet the higher burden of establishing that payments to its affiliate are proper and reasonable. UIF has admitted that UIF does not audit the quality of financial, accounting and other services being provided by its affiliated company, including the services rendered in the test year and pro forma years (see deposition of Barney Deason at page to be determined).
35. UIF has failed for many years to record Commission ordered adjustments in its books.
36. UIF has failed to apply standard original cost practices to record credible investment amounts, including depreciation and retirements.
37. UIF has admitted that it has not audited the costs "allocated" to UIF during the test year or pro forma years by its affiliated company to ensure that such costs are reasonable and the time and materials reflected in such costs are reasonable and were reasonably incurred on behalf of UIF and its customers in Florida (see deposition of Jared Deason at page to be determined).
38. The UIF affiliate in question provides services for many utilities operating in many states. UIF has failed to monitor affiliate services and costs to ensure that services and costs incurred by the UIF affiliate to serve the other utilities in the other states are not part of the costs allocated to and paid by UIF customers in Florida.
39. For instance, UIF has admitted that the affiliated company assists in the utility acquisition process for UIF and the other utilities. UIF does not audit the services provided by the affiliated entity or the cost of services, like acquisition assistance, so UIF cannot remove such costs from the costs allocated to UIF by the affiliate. UIF has failed to present evidence that such costs are not included in the revenue requirement it seeks to establish in this proceeding (see deposition of Jared Deason at page to be determined). This inequity is exacerbated by the fact that UIF has not acquired a system in Florida for a number of years and costs related to failed acquisition attempts are not allowed by the Commission to be recovered in UIF's rates.
40. The member of UIF management presented as its accounting and regulatory expert, with two years of experience at UIF, admitted that he is satisfied to know that a third party audits the allocated costs from the affiliate and expressed the belief that while he believes that he sees the affiliate cost allocation report, he admitted that he does not pay attention to it (see deposition of Jared Deason at page to be determined).
41. The member of UIF management presented as its accounting and regulatory expert admitted that he had no knowledge of UIF bidding out the services currently rendered by its affiliated

company, and expressed no intention to do so (see deposition of Jared Deason at page to be determined).

42. UIF has failed to conduct an affiliate audit itself, failed to provide any evidence of such audit by any entity and thus failed to meet management's burden to ensure that costs the utility pays to its affiliate are reasonable and the quality of its affiliate services are high quality, which management burden is higher when addressing costs imposed upon UIF by an affiliate.
43. UIF failed to present evidence that its cost of capital is the lowest it could be. UIF's President admits that it was UIF's customers who secured \$1 million from the Florida Legislature to finance a significant part of the project which interconnected UIF's Summertree water system to Pasco County Utilities (deposition of John Hoy at page 124). However the MFRs, testimony and exhibits offered by UIF show no attempt by UIF to secure such available funds from the Legislature or state agencies such as the Department of Environmental Protection's state revolving loan fund program to reduce its capital costs. Instead, UIF relies solely on its affiliate and parent company, who obviously are not aware of these Florida-specific low cost and no cost funding sources, to secure long term debt (deposition of John Hoy at page 66). UIF has failed its customers by failing to be diligent in the pursuit of these types of low cost and no cost funds.
44. **The admissions of UIF and failures to produce required evidence indicated in the paragraphs above establish that UIF has failed to meet its obligations and duties to the Commission and to its customers, most egregiously, UIF has failed to present evidence that it has provided high quality service to its customers at the most reasonable cost. UIF also has not provided evidence sufficient to establish that present rates are not adequate to recover prudently incurred expenses and do not already permit UIF the opportunity to recover an adequate return on its prudent investment in plant in service/rate base.**
45. UIF has failed to present evidence as follows:
 - a. Evidence of the test year and pro forma years savings which result from implementation of the asset management system;
 - b. Evidence of the test year and pro forma years savings which result from implementation of the CMMS;
 - c. Evidence of the test year and pro forma years savings from the implementation of the geographic information system;
 - d. Evidence of the test year and pro forma years savings from implementation of the predictive maintenance program;
 - e. Evidence of the test year and pro forma years savings from implementation of the preventive maintenance program;
 - f. Evidence of the non-recurring cost of prior temporary repairs and fixes to plant, lines and associated assets in the test year which will not be incurred in the future and should be removed from the test year;
 - g. Evidence of proper utility accounting which requires timely and accurate recording in the utility's books and records of Commission ordered adjustments as well as utility plant acquisition, depreciation, abandonments and retirements;
 - h. Evidence establishing that costs incurred from its affiliated company are reasonable and the services are high quality;

- i. Evidence establishing that UIF has audited the performance of its affiliated company and that costs simply being allocated to UIF from its affiliate are necessarily incurred on behalf of UIF customers in Florida.
46. UIF's application should be dismissed since UIF and its management knew or should have known that it is obligated to provide the evidence indicated above to allow the Commission to properly determine the reasonable revenue requirement of UIF.
47. Instead, UIF has only provided evidence designed to support an increase of its rates and chosen to conceal or otherwise withhold from the Commission and the parties evidence which would reduce its revenue requirement and thus the rates to be established by the Commission in this proceeding.
- 48. Existing Case Law supports the Commission granting this Motion to Dismiss.**
49. The Court of Appeals for the First District affirmed Commission Order No. 24715 in Docket No. 900329-WS issued June 26, 1991 (the "SSU Denial Order"), copy attached for ease of reference. Docket 900329 addressed an application for a water and wastewater rate increase filed by Southern States Utilities, Inc. (SSU), then Florida's largest investor-owned water and wastewater utility. The Commission denied SSU any rate increase after hearing based upon findings which have relevance to the current status of UIF's rate application. Should the Commission address the issues addressed in this motion at this time and dismiss UIF's application at this time, the Commission will be saving the Commission, its staff and all parties and UIF customers time and money from a hearing and briefing process resulting in a similar dismissal of UIF's application. Prudence and common sense justify dismissal of UIF's application at this time with instruction to UIF to rectify the many deficiencies it has exhibited in its minimum filing requirements, testimony and exhibits to date in this proceeding.
50. "The burden of proof is upon the utility to show that its present rates are unreasonable, fail to compensate the utility for its prudently incurred expenses and fail to produce a reasonable return on its investment." SSU Denial Order at 4. This is a clear statement of UIF's burden of proof by the Commission, quoting two Florida Supreme Court opinions, South Florida Natural Gas v. Florida Public Service Commission, 534 So. 2d 695 (Fla 1988) and Florida Power Corp. v. Cresse, 413 So. 2d 1187 (Fla 1982). UIF President John Hoy admitted the burden of proof was on UIF (deposition of John Hoy at page 113).
51. In denying the SSU rate increase application, the Commission found that when analyzing the record, it repeatedly was "confronted with fundamental flaws in the utility's case". SSU Denial Order at 4. "Most troubling", among other things, was that SSU had only completed 50% of the forecasted construction projects for the first pro forma test year indicated in the MFRs; and that SSU had doubled its projected construction projects for the second pro forma year from the \$10 million in the minimum filing requirements to over \$21 million. Quoting the SSU Denial Order, the Commission found that "[t]he record shows that the planned improvements were either not made, delayed beyond the test year, or more or less expensive than projected." SSU Denial Order at 5. In short, the utility failed to complete so many projects prior to hearing that it spent less than half of what it had informed the Commission it would have completed by the hearing date.
52. As shown above in this motion, UIF has completed so few pro forma projects that as of the hearing date UIF will have spent only approximately 13% (\$4.5 million) of the projected \$37 million it had represented to the Commission that it would spend; and UIF has increased the

amount of such projected pro forma additions by 25% from \$30 million to \$37 million. UIF has attempted to fill the record with late-filed information and documents, but 13% of the projected pro forma investments is the best it could do.

53. "Rate base is to ratemaking what a foundation is to a house since it is the basis upon which the utility's earnings are determined," stated the Commission. "If the utility's own forecasts are so severely in error, it casts a deep shadow on the credibility of the data submitted and makes it very difficult to build a house that will remain standing," concluded the Commission in the SSU Denial Order (Order 24715 at page 6). The Commission cannot establish UIF's revenue requirement based upon the critical failure of UIF to live up to its projections of pro forma additions to rate base.
54. Other similarities also exist between the UIF application, MFRs, testimony and exhibits presented to date by UIF and the facts presented in the SSU Denial Order.
55. The Commission found the utility's operating budgetary process was also "problematic." The Commission found as follows: "In reviewing the budgetary process, one would have to accept that the 1989 expenditure would stand the test of scrutiny. However, there is a difference to this Commission between expenditures stated and expenditures justified. The South Florida Natural Gas and Florida Power Corporation cases previously cited support the concept that stating what an expenditure is, is not the same as justifying why that expenditure was made so that we can determine its reasonableness. Producing cost data does not in and of itself show the reasonableness of that data. The record does not contain justification for the underlying data upon which the 1990 and 1991 projections were based."
56. As shown above in this motion, UIF has failed to include in its MFRs known reductions in its operating budget to be experienced once the asset management system, predictive maintenance system, preventive maintenance system, geographic information system, CMMS and other systems are finally operational. This failure alone is dispositive of this motion. The testimony of UIF witnesses admit the deficiencies in past management and operations practices of UIF and further admitted to the improved service and reduced costs and investments which UIF anticipates upon their implementation. Yet UIF presents nothing to adjust its claimed revenue requirement for these known cost and investment improvements. As in the SSU Denial Order, the budgetary information presented by UIF is not justified and cannot be used to establish a UIF revenue requirement in this proceeding or customers will be paying for costs and investments known by UIF on this day to be excessive. But UIF would not "voluntarily" admit to the amount of these cost reductions or reduced investments or even a projected range of them, nor submit pertinent documents evidencing them to the Commission and the parties in this proceeding. The Commission cannot establish UIF's revenue requirement based upon the critical failure of UIF to adjust its budget to reflect these savings and cost reductions. UIF has not met its burden of proving its present rates are unreasonable or that they fail to compensate UIF for its prudently incurred costs.
57. As to the utility's allocation method for common administrative and general costs based upon number of customers served where the utility incurred such costs on behalf of the customers before the Commission and other customers served by the utility, the Commission found that "[t]he utility has not justified this level of expense or allocation in our view."
58. UIF similarly has failed to present any evidence that it has audited the quality of services provided by its affiliate or the costs which simply are allocated down to UIF by its affiliate.

Indeed UIF's regulatory and accounting expert in UIF management exhibited a profound reluctance to ever consider engaging in such a review. It is the utility's burden to insure quality services are received from its affiliates and at reasonable cost. As the Commission noted in the SSU Denial Order, there is a profound difference between "stating what an expenditure is," and "justifying why that expenditure was made". Due to UIF's failure to provide any study or audit of the services actually provided by its affiliate on behalf of customers in Florida, the scope of such services, quality of such services and associated cost of each service provided, the Commission is unable to determine the portion of such "allocated" costs which should be recovered in UIF's revenue requirement. UIF's customers should not be made to suffer from UIF's mismanagement. UIF thus has once again failed to present information necessary for the Commission to establish UIF's revenue requirement, to prove that present rates are unreasonable, to prove that the present rates fail to compensate UIF for prudently incurred costs and to prove that present rates provide an inadequate return on prudent investments made by UIF in plant in service.

59. Finally, in the SSU Denial Order, the Commission took exception to the lack of detail in the utility's books and records. The Commission stated, "Supporting detail was lacking regarding original cost or fair market value. The utility is required to keep its books in accordance with the Uniform System of Accounts published by NARUC." UIF's books and records are similarly lacking, thus the failure to book Commission ordered adjustments, the appearance of significant negative depreciation balances on its books and other adjustments necessary to UIF's accounting records identified in past Commission orders and Commission staff audits.
60. **UIF has failed to provide a cognizable claim to increased water and wastewater rates.** According to Commission Order No. 95-1432-FOF-WS in Docket No. 950495, Application for Rate Increase of Southern States Utilities, Inc., the standard to be used when the Commission considers a motion to dismiss is whether the applicant has stated a cognizable claim if the facts presented by the utility are viewed in the light most favorable to the utility.
61. In Order No. 95-1432, the Commission cited the First District Court of Appeals decision in Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla 1st DCA 1993), for the proposition that "... in determining the sufficiency of the complaint, the trial court must not look beyond the four corners of the complaint, ... nor consider any evidence likely to be produced by the other side." See also Holland v. Anheuser Busch, Inc., 643 So. 2d 621 (Fla 2nd DCA 1994)(stating that it is improper to consider information extrinsic of the complaint.).
62. Even if the Commission views the MFRs, testimony and exhibits in the light most favorable to UIF, it cannot properly determine UIF's revenue requirement as UIF has (i) failed to present evidence necessary to establish its rate base, (ii) failed to complete 87% of its pro forma projects and thus has failed to give UIF's projections of pro forma plant in service the credibility required to permit the Commission to include such projections in rate base (the foundation of the building is deficient), (iii) failed to remove from its requested revenue requirement and failed to provide, or concealed, information and documents identifying costs incurred in the test year which shall be non-recurring and should have been removed from operating expenses, and (iv) failed to remove from its requested revenue requirement and failed to provide, or concealed, projected cost savings and reductions in UIF investments which would not have been incurred and which no longer will recur after UIF has implemented the asset management, geographic information system, CMMS, preventive and predictive maintenance programs and

other policies, programs and systems which UIF has been lacking all these many years of providing service to customers in Florida.

63. UIF's customers, and particularly members of the Summertree Water Alliance and Mrs. Ann Marie Ryan, cannot be forced to pay rates based upon a revenue requirement so rife with speculation, lacking in credibility and premised solely upon factors which UIF has chosen to reveal to justify a revenue and rate increase, while withholding or failing to reveal and quantify factors that would suggest reduced costs and investments. This the Commission should not bear.
64. The Office of Public Counsel supports the Motion to dismiss on the basis that UIF failed to meet its burden of proof on many issues in its direct case and this deficiency in its direct case manifested itself through the completion of the discovery process as well as by UIF's attempt to offer new evidence in rebuttal to compensate for its burden of proof failures.
65. Seminole County is in support of this Motion in that the Applicant has failed to sustain its burden with respect to rate structure and rate design and rate levels for the recovery of costs.
66. Counsel for Summertree Water Alliance and Ann Marie Ryan attempted twice to call counsel for UIF to get UIF's position with respect to the filing of this motion but UIF counsel was not accepting calls at such times.

WHEREFORE, the Summertree Water Alliance and Mrs. Ann Marie Ryan respectfully request that the Commission dismiss the application for higher rates as filed by Utilities, Inc. of Florida and order UIF to implement standard operating policies, programs and systems like the asset management system, perform the studies and conduct the necessary analyses to establish the true cost of serving its customers once such policies, programs and systems are implemented, and produce evidence confirming that the costs and investments it seeks to recover from its customers are all prudently incurred and reasonable in amount. After such policies, programs and systems are implemented and in effect for a sufficient period of time, the analysis of true costs of operation is conducted, and prudent investments in plant in service are completed, if UIF is prepared to share such analyses and information with the Commission and the parties, UIF may file a revised application for rates reflecting a proper revenue requirement.

Respectfully submitted,



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CERTIFICATE OF SERVICE

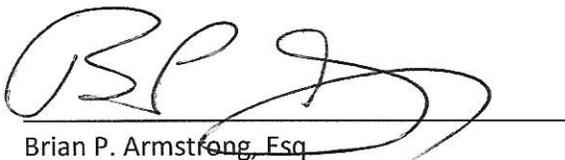
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the following on this 2nd day of May, 2017:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Application for a rate increase) | |
| in Citrus, Martin, Marion, and) | DOCKET NO. 900329-WS |
| Charlotte/Lee Counties by SOUTHERN) | |
| STATES UTILITIES, INC.; in Collier) | ORDER NO. 24715 |
| County by MARCO ISLAND UTILITIES) | |
| (DELTONA) and MARCO SHORES UTILITIES) | ISSUED: 6/26/91 |
| (DELTONA); in Marion County by MARION) | |
| OAKS UTILITIES (UNITED FLORIDA); and in) | |
| Washington County by SUNNY HILLS) | |
| UTILITIES (UNITED FLORIDA)) | |
|) | |

The following Commissioners participated in the disposition of this matter:

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PSC-RECORDS/REPORTING

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FINAL ORDER DENYING APPLICATION
FOR INCREASED RATES AND CHARGES

BY THE COMMISSION:

BACKGROUND

Southern States Utilities, Inc., (SSUI) Deltona Utilities, Inc. (DUI) and United Florida Utilities Corporation (UFU), herein after also referred to as "utility", are Class A utilities with many different systems located across the State of Florida. All three utilities are wholly-owned subsidiaries of the Topeka Group, Inc. (Topeka)

As of December 31, 1989, all of the utility systems under this rate increase application had 11,976 water customers and 6,917 wastewater customers. The combined water systems had actual operating revenues of \$1,166,547 and a net operating income of \$99,871 for the year ended December 31, 1989. The wastewater systems had actual operating revenues of \$2,518,745 and a net operating income of \$319,967 for the same period.

On July 13, 1990, the utility filed its minimum filing requirements (MFRs) for a rate increase which were determined to be deficient. On September 28, 1990, the utility refiled the MFRs which were accepted as complete and that date was established as the official date of filing. On October 15, 1990, the utility filed an amended application for increased rates which reflected the changes made in the MFRs on September 28, 1990. October 15, 1990 was established as the official date of filing. The test year for final rates is the projected twelve-month period ended December 31, 1991, based on the historical year ended December 31, 1989. The utility requested that this case be scheduled for formal hearing and not processed pursuant to the proposed agency action process.

The applicant has requested final water rates designed to generate annual revenues based on four uniform rate structures for the systems included in this application which have like types of treatment. It further states that the final rates requested would be sufficient to recover an 11.93 percent rate of return on rate base.

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The Commission held four service hearings in this case. The first service hearing, which covered Marion and Citrus counties, was held on October 25, 1990, in Ocala, Florida. Fourteen customers presented testimony. The second service hearing, which covered Collier, Lee and Charlotte Counties, was held on November 27, 1990, in Naples, Florida. Seven customers testified. The third service hearing, which covered Washington County, was held on December 3, 1990, in Sunny Hills, Florida. Twelve customers testified. The last service hearing covered Martin County and was held in Stuart, Florida, on January 3, 1991. At this hearing sixteen customers testified.

The Commission acknowledged the intervention of the Office of Public Counsel (OPC) by Order No. 23496, issued on September 17, 1990. On November 26, 1990, the Commission issued Order No. 23803 granting the intervention of the Cypress and Oak Villages Association.

The utility requested interim water rates, in total designed to generate \$1,667,066. These revenues exceeded test year revenues by \$500,519, for an increase of 42.91 percent. The utility requested interim wastewater rates designed to generate annual revenues of \$3,510,010. These requested revenues exceeded test year revenues by \$991,265, for a 39.36 percent increase. The utility stated that this increase in revenue would be sufficient to recover operating expenses and a reasonable return on its rate base. The interim test period is the twelve-months ended December 31, 1989.

On December 11, 1990, the Commission issued Order No. 23860 which suspended the proposed rates and granted interim rates. The Commission granted a county-wide uniform percentage increase for both water and wastewater. The interim increase is subject to refund and secured by corporate undertakings filed by SSUI, DUI and UFU.

The prehearing conference was held on January 22, 1991, in Tallahassee, Florida. The hearing, also in Tallahassee, was held February 11-16, 1991. Briefs from all parties were filed with the Division of Records and Reporting on April 1, 1991.

During the hearing in this case, OPC made two motions to dismiss. The first was based on OPC's view that the MFRs were incomplete and thus the utility did not carry its burden of proof. The second was based on OPC's belief that the customers have been

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denied due process because of the additional information allowed in after the filing. The utility responded by stating that the argument goes to the weight of the evidence and that will be determined by the Commission in its final order.

Upon consideration, the Commission denied both motions at the conclusion of the hearing on the basis that it believed there was an adequate record upon which to make a decision. The Commission noted that it is not uncommon for companies to have problems with their filings - some to a greater or lesser degree than others - and that companies often do not realize what they have asked for. Essentially, the Commission stated it would review the record and determine whether the utility had carried its burden of proof for the increases requested.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Having heard the evidence presented at hearing and having reviewed the recommendation of staff, as well as the briefs of the parties, we now enter our findings and conclusions.

The burden of proof is upon the utility to show that its present rates are unreasonable, fail to compensate the utility for its prudently incurred expenses and fail to produce a reasonable return on its investment. South Florida Natural Gas v. Florida Public Service Commission, 534 So.2d 695 (Fla. 1988); Florida Power Corporation v. Cresse, 413 So.2d 1187 (Fla. 1982). In this proceeding, our review of the record before us leads us to unanimously conclude that the utility did not carry its burden of proof to show by a preponderance of the evidence that it was entitled to a change in its rates. We have jurisdiction to determine the water and wastewater rates of SSUI, DUI, and UFU pursuant to Sections 367.011 and 367.081, Florida Statutes.

The utility filed its case seeking increases for 34 of its systems located in 7 counties. It included those systems which were allegedly earning below their authorized rates of return. The utility was also seeking to have uniform rates applied to these systems.

When analyzing the record, we repeatedly were confronted with fundamental flaws in the utility's case. An example is rate base. The utility could not justify its expenditure for land purchased from Deltona Corporation pursuant to the 1989 purchase by Topeka,

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the utility's parent. Supporting detail was lacking regarding original cost or fair market value. The utility is required to keep its books in accordance with the Uniform System of Accounts published by NARUC. Plant received as part of an acquired operating unit should be recorded at the cost to the person who first devoted it to public service. The recorded amount for subsequently purchased plant should be the cost incurred by the utility.

As part of the Topeka purchase of the DUI and UFU utility systems, Topeka acquired existing plant sites and sites for future utility use. The record shows that some of the land described as future use property had been in utility service when acquired. The utility's witness did not know whether the asking price for existing sites conformed with the original cost when first devoted to utility service. He did not know whether Topeka performed any tests to assure itself that the asking price equalled the cost incurred by the Deltona Corporation. He testified that appraisals would be performed later to establish the market value of the acquired properties in three of the counties in this case. Appraisals were also being performed to determine the value of land when it was first utilized for service. He admitted that a larger purchase price would increase the credit acquisition adjustment relating to the purchase. Thus, we could not include the reported land costs of approximately \$3,963,400 if we were to determine rate base.

Most troubling perhaps, was that the utility's construction budget showed the errors in the utility's own projections. Exhibit 39 compared the 1990 budgeted amounts for construction projects by county as shown in the MFRs with the actual year-end expenditures. It also compared the 1991 amounts in the MFRs with the current revised 1991 budgets. For both years, the figures shown in the MFRs were incorrect by over 50 percent. The 1990 MFR forecasted total was \$15,821,560; the 1990 actual expenditures were \$7,285,083. The 1991 MFR forecasted total was \$10,647,177; the 1991 current revised budget was \$21,256,836. The record shows that the planned improvements were either not made, delayed beyond the test year, or more or less expensive than projected.

Rate base is to ratemaking what a foundation is to a house since it is the basis upon which the utility's earnings are determined. If the utility's own forecasts are so severely in error, it casts a deep shadow on the credibility of the data

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submitted and makes it very difficult to build a house that will remain standing.

The utility's operating budgetary process was also problematic. While called "zero-based budgeting," the utility's presentation indicated to us that its budgeting process was more of a "continuation budget" than zero-based budgeting as that term is commonly understood. In reviewing the budgetary process, one would have to accept that the 1989 expenditures would stand the test of scrutiny. However, there is a difference to this Commission between expenditures stated and expenditures justified. The South Florida Natural Gas and Florida Power Corporation cases previously cited support the concept that stating what an expenditure is, is not the same as justifying why that expenditure was made so that we can determine its reasonableness. Producing cost data does not in and of itself show the reasonableness of that data. The record does not contain justification for the underlying 1989 data upon which the 1990 and 1991 projections were based.

The utility's allocation method used for administrative and general (A & G) expenses of the Apopka office (overhead) was also troublesome. Using the utility's method results in the Sunny Hills system, which has approximately 400 water and 180 wastewater customers, being allocated approximately \$36,000 in A & G expenses. This not only raises the question of the correctness of the allocation method, but whether such allocations are in the public interest. Out of over \$5 million in A & G expenses for the utility as a whole, approximately \$2 million is allocated to the 34 systems in this case. The utility has not justified this level of expense or allocation in our view.

While the utility is seeking to apply uniform rates to these systems, its approach to the case was far from uniform. The record reflects that the utility's consultants used varying methods of treatment on numerous issues. This resulted in inconsistent treatment of the same issue. Further, for Citrus County, the utility did not include all the systems in this county, yet it wanted uniform rates applied to that county. This would leave the other systems in that county with different rates. When asked why the other systems in that county were excluded from the filing, the witness indicated time constraints and the earnings level of the excluded systems as the reasons. Yet we note that the utility had time to refile its sizeable MFRs because the first filing contained so many deficiencies.

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

FILED: May 2, 2017

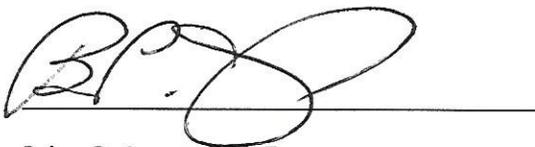
Request for Oral Argument Concerning Motion to Dismiss Application for Increased Water and Wastewater Rates of Utilities, Inc. of Florida

The Summertree Water Alliance and Mrs. Ann Marie Ryan, pursuant to Rule 25-22.0022, Florida Administrative Code, hereby file the Motion to Dismiss the Application for Increased Water and Wastewater Rates filed by Utilities, Inc. of Florida (UIF) and seek oral argument on the following grounds:

1. Utilities, Inc. of Florida (UIF or Company) serves approximately 33,000 water and 26,000 wastewater equivalent residential connections (ERCs) in 10 counties across the state. In early 2016, UIF consolidated 12 separate operating companies and numerous standalone systems into one combined company named UIF. On April 28, 2016, UIF filed its test year approval request.
2. On August 31, 2016, UIF filed its application for increase in rates and accompanying minimum filing requirement (MFR) documents in support of its rate increase and state-wide uniform rates.
3. The minimum filing requirements, direct and rebuttal testimony and exhibits of UIF, on their face, fail to support any change in UIF's revenue requirement as UIF has failed to present evidence which is critical to the Commission's determination of UIF's proper revenue requirement without which no such determination can be made.
4. Oral argument will assist the Commission in understanding and evaluating why the minimum filing requirements, direct and rebuttal testimony and exhibits of UIF are insufficient on their face to support a Commission determination of UIF's revenue requirement for the test year and future years.
7. The Alliance and Mrs. Ryan believe that no more than 5 minutes per Party would be necessary to present Oral Argument.

WHEREFORE, the Summertree Water Alliance and Mrs. Ann Marie Ryan hereby respectfully request that the Commission grant this Request for Oral Argument on the Motion to Dismiss.

Respectfully Submitted,



Brian P. Armstrong, Esq.

Law Office of Brian Armstrong, PLLC

Attorney for the Summertree Water Alliance and Mrs. Ann Marie Ryan

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CERTIFICATE OF CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and foregoing Motion to Dismiss by electronic mail on this 2nd day of May, 2017, to the following:

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