

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Analysis of UTILITIES, INC.'S financial
accounting and customer service computer
system

Docket No.: 120161-WS

UTILITIES, INC.'S RESPONSE IN OPPOSITION TO
OPC'S MOTION FOR SUMMARY FINAL ORDER

UTILITIES, INC. ("UI"), of behalf of its regulated subsidiaries in Florida, by and through its undersigned attorneys, and pursuant to Rule 28-106.204, Florida Administrative Code, files this Response in opposition to OPC's Motion For Summary Final Order which was served on April 17, 2014, and states as follows:

1. OPC asserts that the issue of the Commission's treatment of UI's investment in its financial accounting and customer service computer system is barred by the application of the principle of administrative finality.

2. While the doctrine of administrative finality is well recognized in administrative law, it is not without exceptions. In *Peoples Gas System v. Mason*, 187 So. 2d 335 (Fla. 1966), the Court cautioned against a too doctrinaire approach to the application of administrative finality and recognized exceptions to the doctrine, such as a significant change in circumstance or a demonstrated public interest. *Florida Power & Light Co. v. Beard*, 626 So. 2d 660 (Fla. 1993).

3. OPC misconprehends the implication of the principle of administrative finality in two different aspects, and apparently confuses administrative finality with res judicata. OPC argues that UI should have protested the very first Order which made the divestiture adjustment. That Order, No. PSC-10-400-PAA-WS was issued in a rate case filed by Utilities, Inc. of Pennbrooke, and even if administrative finality was applicable, it would

only apply to that Utility, not other subsidiaries of UI. However, OPC's argument is not without benefit to UI's subsidiaries. If one accepts OPC's rationale, then when this Commission established UI's investment in Project Phoenix in Order No. PSC-08-0812-PAA-WS without any adjustment for divested systems then that Order is final and this Commission was without authority to make the subsequent adjustments. If that is the case then the instant case is moot and this Commission must follow the earliest ruling. Even if one limits the application of OPC's rationale to the particular subsidiary, then five subsidiaries¹ cannot have the divestiture adjustment made. Further, this Commission established the depreciable life of Project Phoenix at six years in three cases and later to eight years in six other cases, and thus this Commission was without authority to subsequently change the amortization period to ten years for those five utilities still regulated by this Commission, and under OPC's theory, the amortization period must remain at six years and the revenues adjusted accordingly due to the mistake. Thus, if it was in the public interest for this Commission to depart from the rationale of the early decisions to the detriment of the utility, then it is equally in the public interest for the utility to argue those changes were not supported by the facts or sound regulatory policy.

4. OPC also misconstrues UI's argument in response to OPC's Motion to Compel. The argument, while it referenced the number of times that this Commission addressed the reasonableness of Project Phoenix, it did so in the context that the issue was not an issue raised by OPC in its protest and the principle of administrative finality was never argued by UI.

¹ Lake Utility Services, Inc.; Utilities, Inc. of Eagle Ridge; Mid County Services, Inc.; Lake Placid Utilities, Inc.; and Labrador Utilities, Inc.

5. The large majority of OPC's argument is directed to arguing why the Prehearing Officer was incorrect in her ruling on its Motion to Compel and is not deserving of a response at this late date. It is too late for OPC to seek a rehearing of that Order (Rule 25-22.0476, Florida Administrative Code), which is the substance of OPC's entire Motion.

6. Although OPC accurately sets forth the standard for this Commission considering its Motion for Summary Final Order, it fails to meet any of the three standards. There are certainly issues of material fact as set forth in the Prefiled Testimony submitted by UI and the Staff. Based upon those facts, UI can prevail on its argument, and finally, OPC is not entitled to a summary final order as a matter of law, since the entire theory which OPC espouses is flawed as to the instant case. The Affidavit adds nothing to OPC's Motion. It is not an Affidavit setting forth any facts, but is merely the legal opinion of another OPC attorney, which procedurally adds nothing to the arguments otherwise made by OPC.

WHEREFORE, Utilities, Inc., on behalf of its regulated Florida subsidiaries, requests that OPC's Motion for Summary Final Order be denied.

Respectfully submitted this 24th day of
April, 2014, by:

FRIEDMAN, FRIEDMAN & LONG, P.A.
766 North Sun Drive, Suite 4030
Lake Mary, FL 32746
Phone: (407) 830-6331
Fax: (407) 878-2178
mfriedman@ffllegal.com
drudolf@friedmanfriedmanandlong.com
jhamel@friedmanfriedmanandlong.com



MARTIN S. FRIEDMAN
Florida Bar No.: 0199060
For the Firm

CERTIFICATE OF SERVICE
DOCKET NO. 120161-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished
by U.S. Mail and E-Mail to the following parties this 24th day of April, 2014:

Erik Saylor, Esquire
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400
SAYLER.ERIK@leg.state.fl.us

Martha Barrera, Esquire
Julia Gilcher, Esquire
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
MBARRERA@PSC.STATE.FL.US
JGILCHER@PSC.STATE.FL.US



MARTIN S. FRIEDMAN
Florida Bar No.: 0199060
For the Firm