

IN THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 160101-WS

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.

**SEMINOLE COUNTY'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

Seminole County submits these Proposed Findings of Fact and Conclusions of Law, pursuant to Section 28-106.215, F.A.C., as they relate to the issues it addressed in the hearing and Post Hearing Brief, Issues 60 – 62, 64 & 65 inclusive. Seminole County adopts and incorporates the supporting argument from its Post-Hearing Statement of Positions and Post-Hearing Brief as if restated herein in its entirety.

Proposed Findings of Fact

1. The single tariff rate approach to allocating the revenue requirements ordered in this proceeding would result in a subsidy whereby the customers of low-cost utilities such as Sanlando would be contributing to the recovery of costs in high cost utilities such as Sandalhaven. [Vol. VI, p. 1029, lines 15 – 19]

2. UIF provided no credible evidence to support the redesign of UIF's rate tariffs for all of its utilities into a single tariff and for the allocation of the authorized revenue increases ordered herein consistent with a single tariff rate structure.

3. UIF's rate structure witness applied a criteria of "unduly discriminatory" which is absent from the Commission's authorizing authority in Section 367.081, Fla. Stat, instead of using "unfairly discriminatory" which is in the Section. [Vol. II, pp. 223, lines 4, 8; 224, line 15].

4. The evidence adduced at the hearing concerning the use of a single tariff rate structure demonstrates that it would cause earnings well above the cost of providing service at Sanlando and would effectively shift nearly 200% of excess revenues between customers in Sanlando (a low-cost utility) to a high-cost utility like Sandalhaven. [Exhibit 295].

5. Generally, such a shift in revenue between low-cost utilities to high-cost utilities that are not operated on a consolidated basis represent a revenue "subsidy." [Vol. VI, p. 1029, lines 15 – 19].

6. UIF failed to produce any evidence to demonstrate that changing rate structures from stand-alone rates to a single tariff rate structure produces more revenues to meet the approved revenue requirement approved by the Commission. [Daniel, Vol VI, p. 1072, lines 8 – 10].

7. Shifting from a stand-alone rate structure to a single tariff rate structure produces no cost savings to the utility. [Guastella Vol. II, pp. 274 - 275, Lines 13 – 12]

8. UIF produced no evidence to demonstrate that shifting to a single tariff rate structure produced more capital for an investment in the repair or replacement of aged utility infrastructures than is produced by stand-alone rates when adjusted to recover the additional revenues approved by the Commission. [Daniel, Vol VI, p. 1072, lines 8 – 10].

9. UIF did not perform a cost of service study for any of its Florida utilities or for the Company as a whole. [MFL, Vol. 1, Schedule E-12, p. 102; Vol. II, p. 222, lines 9 – 14].

10. No evidence was produced at the hearing by the Company to demonstrate when and if subsidy revenues generated by customers of Sanlando Utilities if a single tariff rate structure was adopted would be returned to the utility from which it was generated as capital improvements or replacements of plant. [Hoy, Vol. II, p. 180, lines 5 – 12].

11. No evidence was produced at the hearing by the Company to demonstrate that rate stability was enhanced by using the single tariff rate structure. [Guastella, Vol II, p. 276, lines 22 – 23].

12. No notice was published that the Commission intended to recommend a cap band methodology, and no evidence or testimony was tendered at the hearing on how the Commission intended to justify the use of cap band rate structures using a cost of service determination.

13. No witness tendered by any party to the proceeding described the criteria to use to establish like-kind utilities by the cost of providing service for the setting of a cap band rate structure. [Daniel, Vol. VI, p. 1049, lines 15 – 19].

14. No witness appeared or was tendered by any party to describe the range or variation of costs that are considered permissible for grouping like-kind utilities by cost for the setting of a cap band rate structure.

15. No party advocated through the production of evidence or testimony the use of a cap band methodology for setting rates for any group of like-kind utilities in this proceeding.

16. No direct testimony or cross examination of any witness was undertaken at the hearing in support of the cap band rate structure, and the record does not establish the factors to be considered in establishing the cap band rate structure.

17. Any number of rate structures can be designed to produce the authorized revenue requirement approved by the Commission in this proceeding. [Daniel, Vol. VI, p. 1041, lines 2 – 8].

18. Only two rates structures, stand-alone rates and single tariff rates, were advocated by Seminole County and UIF respectively.

19. The only credible evidence tendered in the record was advanced by the Commission witness Daniel for adopting the stand-alone rates with the appropriate adjustments determined through establishment of the revenue requirement. [Daniel, Vol. VI, pp. 1026 – 1027, lines 12 – 1]

Conclusions of Law

20. The Commission is authorized to establish a revenue requirement in this proceeding for UIF. [Section 367.081(2)(a)1., Fla. Stat.].

21. The revenue requirement will require the Commission to adjust the current rates being charged for water and wastewater services for all of the utilities own by UIF in Florida to recover that incremental revenue requirement. [Section 367.081(2)(a)1., Fla. Stat.].

22. The single tariff rate structure advocated by UIF is unsupported by competent substantial evidence in the record.

23. The single tariff rate structure was not justified by UIF by undertaking the appropriate cost of service study to support the implementation in the change from the previously approved stand-alone rates structures UIF currently is using.

24. UIF failed to justify the use of a single tariff rate structure.

25. Using a single tariff rate structure further fails to justify the imposition of rates that produce a subsidy and an unjustified subsidy fails to meet the statutory requirement that the rates be “just, reasonable, compensatory, and not unfairly discriminatory.”

26. No evidence was presented to justify the subsidies and all of the subsidies fail to meet the statutory test in Section 367.081(2)(a)1., Fla. Stat.

27. The single tariff rate structure is unsupported by a preponderance of the evidence and does not comply with the essential requirements of law.

28. In carrying out its express or implied powers and duties, the Commission “may implement rules through incipient rule-making, e.g., through a case-by-case adjudicatory process.” *Florida Power Corporation v. State of Florida, et al.*, 513 So.2d 1341 (Fla. 1st DCA 1987). *See also Florida Cities Water Co. v. Florida Public Service Commission*, 384 So.2d 1280 (Fla. 1980); *Anheuser-Busch, Inc. v. Department of Business Regulation*, 393 So.2d 1177 (Fla. 1st DCA 1981).

29. No statutory reference exists identifying a “cap band” approach to establishing cost of service allocations.

30. The Commission has not adopted a “cap band” approach to establish a cost of service allocation by administrative rule.

31. A case-by-case adjudicatory process requires notice of the Commission’s intent to consider its incipient policy, evidence of how it intends to apply the policy, and an opportunity to be heard on the issues related to the policy the Commission intends to apply. Section 120.57(1)(b), Fla. Stat.

32. Non-rule policy of the Commission will be invalidated if there is not clearly explicated support for the non-rule policy established through the adjudicative process and is

supported by a record foundation. *Florida Power Corporation v. State of Florida, et al.*, 513 So.2d 1341 (Fla. 1st DCA 1987) . *See also Florida Cities Water Co. v. Florida Public Service Commission*, 384 So.2d 1280 (Fla. 1980); *Anheuser-Busch, Inc. v. Department of Business Regulation*, 393 So.2d 1177 (Fla. 1st DCA 1981).

33. Section 120.57, (1)(b), Fla. Stat., requires proof of incipient agency policy not expressed in rules and subjects it to countervailing evidence and argument.

34. Application of a non-rule policy must be supported by a preponderance of the evidence in the record. *United Telephone Co. of Fla. v. Mayo*, 345 So.2d 648, 654 (Fla. 1977).

35. The record is devoid of evidence sufficient to sustain the burden of establishing the justification for the application of the cap band methodology.

36. There is no record challenge to the stated conclusion that the existing stand-alone rates will produce the requested revenue increases UIF is seeking to support the allocation, or any revenue requirement established by the Commission.

37. The Commission is authorized to apply appropriate adjustments that are justified by changes that occur by the passage of time and in operations costs for each utility owned by UIF in Florida. [Section 367.081(4)(a), Fla. Stat.; Section 25-30.425, F.A.C.].

38. Allocating the authorized revenue requirement resulting from this case uniformly, on a pro rata basis and consistent with the costs of service used to set the currently approved rates will produce new stand-alone rates that are “just, reasonable, compensatory, and not unfairly discriminatory.”

39. The stand-alone rate structure is the only rate structure supported by competent and substantial evidence in the record.

40. The Commission may only approve a rate structure that has been supported by a preponderance of the evidence in the record.

41. The Commission may only adopt a stand-alone rate for UIF's utilities.

Recommendation

1. Seminole County recommends that the authorized revenue requirement determined by the Commission to be consistent with Section 367.081(2)(a)1., Fla. Stat., be allocated pro rata on the same basis that the current stand-alone rates were set for each utility owned by UIF in Florida in its previous and respective rate approvals, taking into consideration any appropriate adjustments proven by the Company.

2. Seminole County recommends that the single tariff rate structure advocated by UIF be rejected as not being consistent with the requirements of Section 367.081(2)(a)1., Fla. Stat.

3. Seminole County recommends that the Commission undertake to adopt by rule any cap-band methodology it seeks to implement in future rates cases in lieu of continuing to seek to apply the policy on a case-by-case basis.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 20th day of June, 2017, that a true and correct copy of the foregoing has been served by electronic mail upon the following:

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