

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings, by Office of Public Counsel.

DOCKET NO. 20180013-PU

FILED: September 12, 2019

PETITION REQUESTING EVIDENTIARY HEARING ON THE PROTESTED PORTIONS OF THE PROPOSED AGENCY ACTION

The Citizens of the State of Florida (Citizens), by and through the Office of Public Counsel (OPC), pursuant to Sections 120.57 and 120.80(13)(b), Florida Statutes (F.S.), and Rules 25-22.029 and 28-106.201, Florida Administrative Code (F.A.C.), file this protest of, and request for an evidentiary hearing on, the Florida Public Service Commission's (Commission's) Order No. PSC-2019-0350-PAA-PU, issued August 22, 2019 ("PAA Order"). In the PAA Order, the Commission allowed Utilities, Inc. of Florida ("UIF" or "Utility") to unjustly keep a tax savings windfall that rightfully belongs to UIF's customers. In support of their Petition, Citizens state as follows:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No. 150071-SU

2. The Citizens include the customers of UIF whose substantial interests are affected by the PAA Order because the PAA Order authorizes the Utility to unjustly keep over-collected income tax expense that rightfully belongs to UIF's customers.

3. Pursuant to Section 350.0611, F.S., the Citizens who file this Petition are represented by the Office of Public Counsel with the following address and telephone number:

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812

Tallahassee, Florida 32399-1400
Telephone No. (850) 488-9330

4. The Citizens obtained a copy of the PAA Order via email on or about August 22, 2019.
5. At this time, the disputed issues of material fact, including a concise statement of the ultimate facts alleged, and those specific facts which Citizens contend warrant reversal and/or modification of the PAA Order, are discussed below.
6. By way of background, UIF requested a substantial rate increase for its consolidated water and wastewater operations in Florida in 2016. On September 25, 2017, UIF was awarded a rate increase of \$5.2 million, based in part on a federal corporate income tax rate of 35% in Order No. PSC-2017-0361-FOF-WU. On December 22, 2017, the federal corporate income tax rate was lowered to 21% beginning January 1, 2018. The OPC has conservatively estimated that UIF's annual tax savings for the newly combined systems is at least \$1 million. Despite the rate increase calculated for UIF to achieve a return on equity mid-point of 10.40% with a corresponding overall rate of return mid-point of 7.53% (and accompanying range of 6.67% to 7.51%), and despite the tax windfall of at least \$1 million, when it self-reported its achieved earnings for 2018, which is the first full calendar year of the rate increase and the tax savings, the Utility showed earnings below the bottom of the ROR range at 4.9% and 6.25% for water and wastewater operations, respectively. Based on this unaudited self-report, the Commission proposes in its PAA Order to allow UIF to seize the overpaid income taxes that rightfully belong to UIF's customers. The Citizens object to this proposal.
7. Therefore, pursuant to Section 120.80(13)(b), F.S., Citizens protest the applicable portions of the PAA Order only as it relates to UIF, its appropriation of the estimated \$1 million windfall in tax savings and the related disputed issues of material fact listed below. Further, Citizens protest any reasonably and necessarily related legal, policy and fact issues resulting from the specifically identified areas of protest. Further, Citizens' reserve their right to fully participate in the hearing process to

address any issues identified in any other party's protest or cross-petition. Below is a preliminary list of issues identified by Citizens for UIF as being ripe for hearing in this protest.

Statement of Disputed Facts and Issues

Legal and Policy Issues:

- Issue 1. Under what conditions can the Commission allow UIF to retain excess federal corporate income tax expense (current and deferred) collected at a 35% (or greater) rate but payable to the United States Treasury at a 21% rate?
- Issue 2. Has UIF accurately reflected in its 2018 Annual Report the determinations made in Commission Order No. PSC-2017-0361-FOF-WS?
- Issue 3. Does the UIF 2018 annual report accurately reflect reasonable and prudent costs actually incurred, including affiliate transactions recorded at arm's length?

Earnings-related fact issues:

- Issue 4. Does the UIF 2018 annual report accurately reflect the revenues collected?
- Issue 5. Does the UIF 2018 annual report accurately reflect the true capital costs for UIF?
- Issue 6. What is the actual, prudent balance of plant in service for 2018?
- Issue 7. What is the actual, prudent balance of accumulated depreciation for 2018?
- Issue 8. What is the actual, prudent balance of CIAC for 2018?
- Issue 9. What is the actual, prudent balance of Accumulated Amortization of CIAC for 2018?
- Issue 10. What is the actual, prudent used and useful percentage for the wastewater and water plant for 2018?
- Issue 11. What is the actual, prudent balance of miscellaneous deferred debits for 2018?
- Issue 12. What is the actual, prudent rate base for 2018?
- Issue 13. What is the actual, prudent capital structure, including the amount of debt and equity for 2018?
- Issue 14. What is the actual, prudent amount of revenues for 2018?
- Issue 15. What is the actual, prudent amount of O&M expenses (including rate case expense) for 2018?

- Issue 16. What is the actual, prudent amount of depreciation expense for 2018?
- Issue 17. What is the actual, prudent amount of taxes other than income for 2018?
- Issue 18. What is the actual, prudent achieved return on equity for 2018?
- Issue 19. What is the actual, prudent amount of income taxes for 2018?
- Issue 20. What is the actual tax savings resulting from the Federal Tax Cut and Jobs Act (“TCJA”) for 2018?

Refund and rate reductions issues:

- Issue 21. How should the Commission dispose of the actual tax savings resulting from the TCJA for 2018?
- Issue 22. How should the Commission dispose of the actual tax savings resulting from the TCJA for the period January 1, 2019 through the date rates are permanently adjusted to reflect the return of tax savings resulting from the TCJA?
- Issue 23. What adjustment to rates should the Commission order to account for the actual tax savings resulting from the TCJA for 2018 so that UIF’s rates are fair, just and reasonable?

Statement of the Ultimate Facts Alleged

The ultimate facts from each of the issues discussed above will vary depending upon the testimony and discovery brought forth in this hearing; however, significant refunds and reductions in the customers’ rates should be the result.

6. Pursuant to Sections 367.081 and 367.121, F.S., the Commission has the authority and duty to prescribe and fix just and reasonable rates and charges. Pursuant to these statutes, adjustments should be made to the rates and charges approved by the PAA Order. In the broadest terms, the Citizens’ ultimate factual allegation is that the PAA Order’s rates and charges are unfair, unjust, unreasonable, excessive, and unfairly discriminatory. UIF’s appropriation and retention of the windfall tax savings renders the rates set less than 4 months before the tax rate change using the 35% federal corporate income tax rate unfair, unjust, and unreasonable. The disputed issues of material fact delineated in and

by Citizens' protest should be interpreted broadly in order to effectuate full discovery on the disputed issues, thereby allowing the parties to adequately determine the scope of the issues for consideration and determination. Citizens' protest encompasses any additional issues logically arising from the specifically identified areas, including related issues that may arise during the process of discovery issued in this case. Further, Citizens reserve the right to fully participate in the hearing process, take positions and file testimony on any additional issues raised by any other party's protest or cross-petition, and resolve any issues which come to light during the pendency of this docket.

7. Citizens are entitled to a *de novo* proceeding on the disputed issues of material fact raised in Citizens' protest of the PAA Order. Citizens maintain that UIF has the burden of proof in all aspects of the requested evidentiary hearing pursuant to Section 120.57(1), F.S., and if the burden of proof is not satisfied, the disputed issues of material fact must be resolved in favor of the Utility's ratepayers.

8. By Order No. PSC-2019-0350-PAA-PU, protests of the PAA Order shall be filed with the Office of Commission Clerk no later than the close of business on September 12, 2019. This Petition has therefore been timely filed.

9. Sections 367.081 and 367.121, F.S., are the specific statutes that require reversal or modification of the PAA Order.

10. Citizens request that the Commission take the following actions with respect to this protest and objection to the PAA Order:

- a) Establish a hearing schedule to resolve the disputed issues of material fact as described above, including any additional issues raised by a party's protest or cross-protest and on any issues which come to light during the pendency of this docket.
- b) (1) Establish the amount of tax savings windfall achieved by UIF for 2018 as a result of the TCJA and order that amount be refunded to the Utility's ratepayers; (2) permanently

adjust rates going forward based on a 21% federal corporate income tax rate, and (3) order that any over-collection in tax savings windfalls occurring from January 1, 2019 until rates are permanently adjusted in accordance with (2) herein, also be refunded to UIF's ratepayers.

WHEREFORE, the Citizens hereby protest and object to Commission Order No. PSC-2019-0350-PAA-PU, as provided above, and respectfully petition the Commission to conduct a formal evidentiary hearing, as required under the provisions of Section 120.57(1), F.S., at a convenient time within or as close as practical to the Utility's certificated service area.

Respectfully Submitted,

JR Kelly
Public Counsel

/s/ Charles J. Rehwinkel
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CERTIFICATE OF SERVICE

I, **HEREBY CERTIFY** that a true and correct copy of the Office of Public Counsel's
PETITION REQUESTING EVIDENTIARY HEARING ON THE PROTESTED PORTIONS
OF THE PROPOSED AGENCY ACTION has been furnished by electronic mail to the following
parties on this 12th day of September 2019.

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