

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA**

In Re: Utilities Inc. of Sandalhaven Application
for Rate Increase.

Docket No. 2011-001-S

OBJECTIONS TO RATE CASE EXPENSE
SUBMITTED BY THE OFFICE OF PUBLIC COUNSEL

Pursuant to notice, this matter came for formal evidentiary hearing before Diane K. Kiesling, duly appointed Hearing Officer, on August 22-23, 2012, in Port Charlotte, Florida.

Summary

In its proposed recommended order (PRO) and final rate case expense submission filed on October 1, 2012, Utilities, Inc. of Sandalhaven ("Sandalhaven" or "Utility") requested recovery of \$173,471 for rate case expense to process the case. Compared to the amount of rate case expense exhibit filed at the hearing of \$158,017 (Exh Revised/Updated EA-1), Sandalhaven's requested final rate case expense increased by \$15,455. The differences of amounts incurred by category are reflected below:

Comparison of Hearing Exhibit to Final Requested Amount

Description	8/24/2012 Amount	9/15/2012 Amount	\$ Difference
Legal	\$58,138	\$68,816	\$10,678
Consultant, Engineering	\$50,475	\$54,400	\$3,925
WSC Personnel Charges	\$46,971	\$47,872	\$901
WSC Other Charges	\$2,433	\$2,384	(\$49)
Total	\$158,017	\$173,472	\$15,455

OPC has reviewed the incremental increase in rate case expense requested by the Utility. With regard to the incremental increase in legal, the amount and number of hours shown on the itemized invoices appears to be reasonable and consistent with the amount of time required to file a PRO. With regard to the incremental increase in Consultant – Engineering expense, the consultant's itemized invoices provided no detailed explanation for the incremental increase other than "assist with PRO." (See Management & Regulatory Consultants, Inc., invoices dated

09/04/12 and 09/28/12) However, the amount of time spent "assisting with PRO" (approximately 18.25 hours) appears to be reasonable.¹

With regard to the incremental increase in Water Service Corporation (WSC) personnel charges, there are no itemized invoices submitted by any WSC employees stating: (1) whether the employee assisted with the PRO; (2) how much time he or she spent assisting with the PRO; and (3) no detailed description of what he or she did to assist with the PRO. Instead of providing any detailed invoices, timesheet, or other evidence to support the incremental increase in WSC employee charges, there is simply a \$901 increase in the amount charged by WSC employees following the close of the hearing on August 23, 2012. OPC does not believe the requested increase in WSC personnel charges is supported by the documentation submitted. For the reasons stated later in this objection, OPC asserts that the affidavits submitted by the Utility to support the WSC employee rate case expense charges are insufficient evidence because the affidavits lack the detail necessary to determine whether the time and hourly billing rate are reasonable. A naked dollar amount without any additional supporting information cannot be evaluated for reasonableness or prudence. Therefore, the incremental as well as all other rate case expense charges submitted by WSC personnel should be disallowed.

Objection to WSC personnel rate case expense

The original purpose of the final rate case expense submittal was to allow the Utility to submit the actual incremental expense incurred from the final day of the hearing to the date of the filing of the Utility's proposed recommended order so that the hearing officer would have the final actual amount of rate case expense without any remaining estimates to complete. While the record usually closes at the conclusion of an administrative hearing except for the submission of proposed recommended orders, the hearing officer made an exception for submission of incremental rate case expense to provide accurate actual final rate case expenses incurred by the Utility. (TR 271) The hearing record was being held "open for that one opportunity and that one opportunity only." (TR 272) All the parties agreed that this post-hearing procedure was acceptable to allow the Utility to provide evidentiary support for the incremental difference for that short time frame.

During cross examination of County witness Wilson by OPC, OPC asked a series of questions to establish that the Utility had failed to provide competent substantial evidence to support requested rate case expense for in-house employees of Water Service Corporation. (TR

¹ OPC notes there are at least two receipts for food purchased in Illinois included in the Utility's requested rate case expense. (See Exh, EA-1, Rate Case Expense (FINAL)_Part2.pdf, page 22) There is a bill from Johnny's Kitchen & Tap for \$27.00 and one from Zapatista for \$47.00. There is no explanation of who purchased the food, how or why these food purchases are relevant to this rate case, or why the customers should be responsible for those amounts. Although it would not result in a material reduction, \$74.00 in unnecessary food expenses should be disallowed.

261-266) To support disallowing unsupported WSC employee rate case expense, OPC also placed into evidence two recent orders by the Florida Public Service Commission (FPSC) (See Exh OPC-3 and OPC-4). While the FPSC orders are not binding on the Charlotte County Commission, OPC asserts they provide helpful guidance on how to deal with unsupported rate case expense submitted by WSC employees in other regulatory jurisdictions. Moreover, it remains the Utility's burden to justify its requested rate case expense is reasonable. *See Florida Power Corp. v. Cresse*, 413 So. 2d 1187, 1191 (Fla. 1982) The hearing officer, sitting in the place of the County Commission, has broad discretion with respect to allowance of rate case expense so long as the requested rate case expense is supported by competent substantial evidence. *See Meadowbrook Util. Sys., Inc. v. FPSC*, 518 So. 2d 326, 327 (Fla. 1st DCA 1987), review denied, 529 So. 2d 694 (Fla. 1988).²

During a sidebar discussion following that cross-examination, counsel for Sandalhaven stated the Utility was unable to provide such detailed support for its WSC employee rate case expense costs because to do so would reveal confidential information about employee salaries. (TR 272-275) After much discussion on the issue, the hearing officer suggested that the Utility could submit affidavits from its WSC employees that would have a name, amount, and scope of work without going into the details in order to support rate case expense for WSC employees. (TR 283-284) Counsel for OPC reserved the right to examine what the Utility provided as proof as well as the right to argue it was insufficient. (TR 284, 286) On October 1, 2012, the Utility submitted its final actual rate case expense amount as well as 18 affidavits signed by WSC employees purporting to support rate case expense. (Exh EA-1, Rate Case Expense (FINAL)_Part2.pdf, pages 38-55)

There appears to be some confusion about employee salaries and employee billing rates and what is and is not confidential. As noted in OPC's proposed recommended order, Sandalhaven included a schedule for estimate rate case expense in its MFRs. (Exh FS-2, Schedule OI-4) The estimated rate case expense schedule was broken down by employee name, number of hours, billing rate, and job description. (Id.) It showed the projected number of hours and hourly billing rate of each WSC employee that it expected to work on the case. (Id.) This billing rate information was not considered confidential when the Utility filed its rate case, and OPC asserts it is not confidential now as it does not reveal anything about WSC employee salaries now. While the hourly billing rates historically have been charge-out rates with benefits

² *Meadowbrook Util. Sys., Inc. v. FPSC*, 518 So. 2d 326, 327 (Fla. 1st DCA 1987) ("... the principle is well settled that the Commission enjoys a broad discretion with respect to allowance of rate case expense. *Florida Crown Utility Services, Inc. v. Utility Regulatory Board of the City of Jacksonville*, 274 So.2d 597 (Fla. 1st DCA 1973). While an automatic award of rate case expense in every case, without reference to the prudence of the costs incurred in the rate case proceedings, clearly would constitute an abuse of discretion, we find no such abuse of discretion in the record before us.")

and payroll taxes factored into the charge and as such might generally trend with the level of salaries, there is no testimony or record evidence that this is the case for how WSC created its employee billing rates. Thus, it is incredulous that the Utility is now attempting to claim that disclosing an employee's *billing rate* and number of hours would somehow reveal that employee's salary because there is no way based on the hearing record to "reverse engineer" and determine an individual employee's salary.

Affidavit deficiencies

OPC has reviewed Sandalhaven's affidavits which attempt to support its WSC costs and avoid the "problems with confidentiality." OPC has severe reservations regarding the evidentiary weight potentially being assigned to the signed affidavits. Each affidavit includes the employee name, job title, the dollar amount of rate case expense charged for that employee, and general job description for that employee. While the affidavits attempt to comply with the hearing officer's proposed compromise, the affidavits in-of-themselves are insufficient to show whether the level of rate case expense was reasonable.

The first deficiency with these affidavits is that each employee is swearing that he/she incurred a specific amount of expense. However, there is nothing in the affidavit that indicates whether the amount is reasonable. Second, there is no hourly breakdown to determine whether the amount of time spent on the job description tasks were reasonable. Third, the affidavits for these employees do not indicate whether this work performed by the employees is in addition to their salaries or was part of their salaried position.

Fourth, for each employee, the task description used to support rate case expense in this case is a generic job description. It in no way explains or describes the type of work that each employee spent on this case but instead provides a description of why this person's salary should be recorded on the books of the Utility. For example, on the affidavit for Regional Vice President Rick Durham, it states for the \$470.36 in rate case expense, Mr. Durham " -Oversees all operations of the regional offices, -Serves as the regional ambassador and local company contact for customers, community organizations, state commissions, and representatives, and - Performs other relate duties as assigned." Nowhere does it state what Mr. Durham specifically did on the Sandalhaven rate case. There is no correlation between his job description and his accumulated amount of rate case expense. For Regional Director Patrick Flynn, his description is even more ambiguous: "-Manages the preparation of all rate cases, pass-through and indexing activity, changes to service territory, and any other PSC relate activities in coordination with the company's regulatory department." In the Sandalhaven case, the record demonstrates that Mr. Flynn filed testimony and testified at the hearing, but that fact cannot be determined by

examining the generic job description included on his affidavit. None of the affidavits includes specific job duties performed on the Sandalhaven rate case.

Fifth, the affidavits do not affirm that the employees are even employed by Water Service Corporation, and thus, the affidavits may be materially defective. For each affidavit, the job title states that the affiant is “___ Fill in Job Title ___ *for Utilities, Inc. of Sandalhaven.*” However, which Utilities, Inc. entity employs these individuals? Is it Utilities, Inc. of Sandalhaven (a subsidiary), Utilities, Inc. (the parent), or WSC (the affiliate service company)? It is the understanding of OPC that these individuals are employed by WSC. As WSC employees, they provided billable services to Utilities, Inc. of Sandalhaven for this rate case. However, if they are employed by Utilities, Inc. or Utilities, Inc. of Sandalhaven, then how can they also be employed by WSC to provide billable services to themselves? Utilities, Inc. of Sandalhaven is seeking rate case expense for WSC personnel. (See Exhibit EA-1, line 7 states, “Water Service Corp. Various Personnel . . . \$47,872.”). The affidavits, however, do not state that these individuals work for WSC. Hence, there is confusion about whether these individuals work for WSC or some other entity and whether the affidavits accurately reflect the Utility’s requested rate case expense for *WSC personnel*. Since the record is now closed, the Utility cannot clear up the confusion.

While the affidavits can be used as evidence that a certain dollar amount was purportedly accumulated by a certain individual, the affidavits cannot be reviewed to determine whether the amount was reasonable. Thus, the affidavits cannot be evidence to support the reasonableness of the dollar amount incurred by WSC personnel on behalf of Utilities, Inc. of Sandalhaven. Moreover, the affidavits cannot be used to support a finding that the amount of rate case expense incurred by WSC personnel was reasonable. Since there is no means in the record by which to review the WSC requested rate case expense for reasonableness, the rate expense associated with WSC personnel should be disallowed.

More detail necessary

As note earlier, Sandalhaven included the projected number of hours and hourly billing rate of each WSC employee that it expected to work on the case in its MRFs. (Exh FS-2, Schedule OI-4). After the MFRs were filed and prior to the final rate case submittal, the Utility did not file any itemization or detailed information to support these employee costs. Examples of types of support that could have been filed would have been descriptions of work performed such as preparing the different sections of the MFRs, calculating the rates, preparing discovery responses, writing testimony, attending the hearing, etc. The Utility’s attorney and engineering consultant provided invoices with this level of detail to support their rate case expense. However, up to and including the hearing, the documentation to support WSC employees was

not itemized. The post-hearing affidavits merely contain an employee's job description and a dollar figure for accumulated rate case expense. As a policy question, why should evidence to support WSC personnel rate case expense be materially different from the evidence required to support rate case expense for the Utility's attorney and engineering consultant?

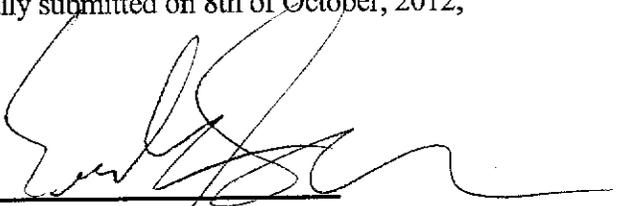
Looking at the invoices for the legal fees and consulting engineering fees, both of those firms provide detailed invoices on a monthly basis including a detailed description of the work performed and the number of hours spent on each task. Had the attorney and engineering consultant turned in invoices with dollar amounts and no descriptions included, it would be highly unlikely that the Utility would have paid such an invoice. OPC argues that if WSC wishes to bill its employees as consultants to Sandalhaven and have those employees' salaries recovered through rate case expense, then the same type of detail should be required to be submitted to allow recovery. Otherwise, the WSC billing costs should be recovered as normal and recurring salaries allocated on an annual basis. By not providing time sheets or invoices for each employee with descriptions of work performed on this rate case, one cannot tell whether the employees' salaries have been included in test year expenses already. Allowing recovery of WSC employee salaries through rate case expense could result in double recovery.

Conclusion

OPC believes that the rate case expense requested by the Utility must be reviewed for reasonableness, and if it cannot be reviewed, it should be disallowed. OPC does not dispute the rate case amounts submitted by the Utility's attorney or engineering consultant; however, OPC asserts the Utility had many opportunities but failed to provide any record evidence that supports a finding that the level of WSC personnel expense is reasonable. Thus as asserted in OPC's PRO and above, WSC personnel costs should be disallowed so that customers do not bear those unsupported costs.

Ultimately, it is the Utility's burden to support its requested costs and the Utility has failed to meet this burden with regard to the WSC personnel costs, and such costs should be disallowed. The Utility has sufficiently documented and supported \$124,600 of its requested rate case expense. The requested \$47,872 in WSC personnel charges should be denied as unsupported.

Respectfully submitted on 8th of October, 2012,



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CERTIFICATE OF SERVICE
DOCKET NO. 2011-001-S

I HEREBY CERTIFY that a true and correct copy of the foregoing OBJECTIONS TO RATE CASE EXPENSE SUBMITTED BY THE OFFICE OF PUBLIC COUNSEL has been furnished by electronic mail and U.S. Mail to the following parties on this 8th day of October, 2012.

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