

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate) DOCKET NO. 920310-TL
increase by CENTRAL TELEPHONE) ORDER NO. PSC-92-0534-PCO-TL
COMPANY OF FLORIDA.) ISSUED: 06/19/92

ORDER GRANTING IN PART AND DENYING
IN PART MOTION FOR PROTECTIVE ORDER
AND MOTION TO COMPEL

On April 3, 1992, Central Telephone Company of Florida (Centel) filed a letter requesting approval of a projected test year for the purposes of filing Minimum Filing Requirements (MFRs) in a contemplated rate case. Pursuant to our usual practice in such situations, this docket was opened in anticipation of the rate case. On April 8, 1992, the Office of Public Counsel (OPC) filed a Notice of Intervention in this docket. On April 9, 1992, OPC served Centel with its First Set of Requests for the Production of Documents (First POD). On May 14, 1992, Centel filed its First Motion for Protective Order, a Motion for Interim Protective Order (now moot), and its Response to OPC's First Set of Requests for the Production of Documents (First Response). In its First Response, Centel reserved the right to raise further objections to the First POD. On May 19, 1992, OPC filed its Opposition to Centel's Motion for an Interim Protective Order, its Opposition to Centel's First Motion for Protective Order, and a Motion to Compel Centel to Produce Documents Responsive to the First Request for the Production of Documents. On May 26, 1992, Centel filed a Memorandum of Law in Opposition to OPC's First Motion to Compel and a Request for Oral Argument. On June 12, 1992, a Notice of Motion Hearing was issued to hear oral argument on June 18, 1992.

Centel's argument as set forth in its First Motion for Protective Order and in its oral arguments is two-pronged. First, Centel asserts that discovery is not appropriate at this time because Centel has not yet filed its petition for a rate increase. Centel argues that until the filing of its petition, the action has not commenced and discovery is inappropriate. Second, Centel asserts that to require compliance with discovery prior to filing the MFRs would be unduly burdensome.

OPC's argument as set forth in its Opposition to Centel's First Motion for Protective Order is essentially based on a liberal interpretation of the concept of initiating a proceeding or action before this agency. OPC argues that in filing the test year letter and requesting a docket be opened, Centel initiated a proceeding and subjected itself to discovery. OPC further argues that its First POD requires only the production of existing documents rather than the creation of new documents or information. OPC contends that the production of such documents is less than an overwhelming burden in the course of a rate case.

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Centel's argument that discovery is not appropriate until the filing of a petition for a rate increase is premised on the assumption that proceedings before this agency are strictly analogous to proceedings in a civil court. From this premise, Centel further argues that the application of the Rules of Civil Procedure in actions before this agency should be virtually identical to the application of those rules in a civil court proceeding. This argument ignores the special requirements and priorities of a regulatory agency that do not exist in a civil court proceeding. It also ignores the flexibility inherent in both this Commission's Rules and the Florida Rules of Civil Procedure.

As stated previously, we have historically opened the rate case docket and permitted intervention by interested parties upon filing of the letter requesting approval of a test year. This allows parties, as well as our staff, to keep abreast of the progress of the anticipated rate case and begin the preparation of their cases as early as possible. Because of the unusual time constraints that exist in a rate case, which do not exist in routine civil litigation, it is both appropriate and necessary to permit intervention and discovery as early in the case as possible.

Centel argues that our Rules require us to strictly apply the Rules of Civil Procedure. Centel relies, in part, on Rule 1.050, Florida Rules of Civil Procedure, which defines when an action commences. However, Rule 25-22.034, Florida Administrative Code, which addresses discovery in proceedings before this Commission, adopts only Rules 1.280 through 1.400, Florida Rules of Civil Procedure. Rule 25-22.034 makes no mention of Rule 1.050, or in any way addresses the commencement of a rate adjustment proceeding for discovery purposes. Because of the unique nature of this Commission's proceedings and the corresponding needs of the parties that participate in these proceedings, I believe it is appropriate to interpret and apply Commission Rules and the Rules of Civil Procedure in a manner compatible with these needs and requirements.

Centel also argues that compliance with discovery at this point in the proceeding would be unduly burdensome. Centel asserts that the resources necessary to comply with the First POD are the same resources required to file the MFRs in a timely manner. Centel further argues that not all of the requested documents are available at this time, and that some of the documents will become available in their final form only upon completion of the MFRs. Yet, even a cursory review of OPC's First POD indicates that a number of the documents should be readily available and that partial compliance with at least eight of the requests can be readily accomplished. The burden placed on Centel by compliance with the First POD is simply not sufficient to justify total

relief. While the possibility exists that strict and complete compliance with the First POD may not be immediately feasible, such difficulty does not rise to the level of an undue burden.

Based on the specific facts of this case and the arguments presented by OPC and Centel at both the Motion Hearing and in their respective pleadings, I find it reasonable and appropriate to require Centel to produce the following documents from OPC's First POD within seven days of the date of this Order:

- A) Request No. 1 - Centel shall produce all 1991 variance reports for Central Telephone Company of Florida and Central Telephone Company.
- B) Request No. 3 - Centel shall provide all documents requested.
- C) Request No. 6 - Centel shall provide all internal audits prepared by or for the Company since January 1, 1990, including audit workpapers.
- D) Request No. 7 - Centel shall provide each prepared by client (PBC) file prepared at the request of Centel or for its outside auditors for the financial reporting period of 1991.
- E) Request No. 8 - Centel shall provide all prepared by client (PBC) schedules or documents provided to the FCC in connection with any of their audits of Centel.
- F) Request No. 9 - Centel shall produce all documents requested.
- G) Request No. 10 - Centel shall produce all documents requested.
- H) Request No. 23 - Centel shall produce all documents requested.

In addition to complying with these requirements, Centel shall comply with the balance of the PODs by July 17, 1992. This shall include the remainder of the documents identified in Requests Nos. 1, 6, 7, and 8. Finally, any further objections Centel may have to these remaining Requests shall be filed by July 2, 1992.

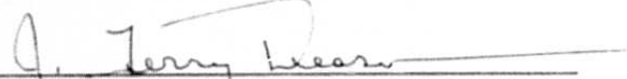
Based on the foregoing , it is

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ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Central Telephone Company of Florida shall comply with the Office of Public Counsel's First Set of Requests for the Production of Documents as described in the body of this Order. It is further

ORDERED that any further objections to the Requests not specifically enumerated in the body of this Order shall be filed by July 2, 1992.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 19th day of June, 1992.



J. TERRY DEASON, Commissioner
and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric,

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gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.