

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate)
increase in Brevard, Charlotte/)
Lee, Citrus, Clay, Duval,)
Highlands, Lake, Marion,)
Martin, Nassau, Orange,)
Osceola, Pasco, Putnam,)
Seminole, Volusia, and)
Washington Counties by SOUTHERN)
STATES UTILITIES, INC.; Collier)
County by MARCO SHORES)
UTILITIES (Deltona); Hernando)
County by SPRING HILL UTILITIES)
(Deltona); and Volusia County)
by DELTONA LAKES UTILITIES)
(Deltona))
_____)

DOCKET NO. 920199-WS
ORDER NO. PSC-92-1036-PCO-WS
ISSUED: 09/23/92

ORDER DENYING IN PART AND GRANTING IN PART
OPC'S MOTION TO COMPEL AND DENYING OPC'S
MOTION FOR ADDITIONAL TIME TO FILE TESTIMONY

On August 25, 1992, the Office of Public Counsel (OPC) filed a Motion to Compel and a Motion for Additional Time to File Testimony. On September 8, 1992, Southern States Utilities, Inc., and Deltona Utilities, Inc., (collectively referred to as SSU or the utility) filed a response to OPC's motions; and on September 9, 1992, the utility amended its response.

Having reviewed the arguments in OPC's motions and in the utility's response, I hereby deny in part and grant in part OPC's Motion to Compel and deny OPC's Motion for Additional Time to File Testimony.

MOTION TO COMPEL

In its Motion to Compel, OPC says that the discovery requests enumerated in the body of the motion are overdue and were not objected to. OPC asserts that SSU either did not answer or provided an incomplete answer to the subject requests.

In its response, the utility states, "The allegations contained in Public Counsel's Motions are mere assertions, unsworn and unsubstantiated by affidavit or other support." The utility has attached to its response the affidavits of several utility personnel who aver to the utility's responding to some of the discovery requests involved.

DOCUMENT NUMBER-DATE

11073 SEP 23 1992

FPSC-RECORDS/REPORTING

I note that with the exception of the last two discovery requests addressed in OPC's motion, all of the discovery requests for which OPC seeks to compel responses are from its first set of interrogatories or first set of production of documents. I also note that, with the exception of the utility's interrogatory responses served July 24, 1992, none of the utility's interrogatory responses served on the Commission staff have been accompanied by affidavits, as Fla. R. Civ. P. 1.340(a) requires.

Interrogatory No. 10

Interrogatory No. 10 solicited various information regarding systems acquisitions by the utility. OPC states that despite the utility's offer to allow it to examine the acquisition files in lieu of answering the interrogatory, the utility has "failed to provide most of the information in written or any other form." In its response to the interrogatory the utility indicates under subparts (m) and (g) that it would provide OPC access to the required information. In its response to OPC's motion, the utility states, and supports by affidavit, that OPC was provided access to its acquisition records. Copies of the documents which OPC requested copies of, the utility states, were provided to OPC at the utility's premises or were transmitted by letter the day after OPC filed the instant motion.

In consideration of the contradicting representations of the parties, I do not find that the utility failed to comply with the discovery request. However, I think it appropriate to require the utility to provide access to the information requested at OPC's convenience. If the utility has already provided the information, as it claims, it should have no objection to doing so again.

Interrogatory No. 21

Interrogatory No. 21, in the third of three subparts, asked for a complete copy of any attrition studies or analyses for the past four years. In its motion, OPC claims that the utility failed to provide the data for the years 1989 and 1990. In its response to OPC's motion, the utility explains that its response to the request indicated that it did not make any claims for an attrition allowance in this rate case.

The first subpart of Interrogatory No. 21 asks if an attrition allowance is sought; the second subpart asks the amount, if requested; and the third subpart solicits the subject analyses. In consideration of how this interrogatory was structured and the

negative inference in OPC's motion (that it recieved attrition analyses for years other than 1989 and 1990), the utility is understandably confused. I do not see what relevance any attrition analyses can have if an attrition allowance was not requested. Therefore, absent further explanation by OPC, I will not at this time compel the utility to answer.

Interrogatory No. 42

Interrogatory No. 42 requested a list of utility officers and their salaries and administrative personnel and their salaries for the years 1989, 1990, and 1991. In its motion, OPC states that the utility failed to provide the requested information for Burt Phillips, Charles Wood, and Donny Crandall. OPC argues that even if one of the utility's parent companies pays the referenced individuals, OPC should receive the requested information. In its response to OPC's motion, the utility explains that the individuals mentioned by OPC were not officers of SSU for the entire period in question. In addition, the utility argues that it provided the requested information for Mr. Wood for 1989 in its response to OPC Interrogatory No. 85 and for 1990 and 1991 for Mr.'s Phillips and Crandall in its response to OPC Document Request No. 80.

I think it appropriate to compel a response to Interrogatory No. 42 as it relates to Mr.'s Phillips, Wood, and Crandall. The response to Document Request No. 80, which the utility claims contains the requested information for Mr.'s Phillips and Crandall, refers to the response to Document Request No. 81, which in turn refers to the response to Document Request No. 52. None of the responses in the utility's chain of references contain the information in a recognizable form. Therefore, the utility shall supply OPC with a list of the salary information for the three subject individuals for each of the years in question within five days of the date of this Order. The utility shall specify when the individuals were officers or employees of the utility and provide the salary information for those periods.

Interrogatory No. 94 (d) and (f)

OPC asserts the utility did not seeks to compel an answer to Interrogatory No. 94 because the utility did not respond to subparts (d) and (f). In its response to OPC's motion, the utility states that it provided responses on August 28th. The docket file reveals that the utility filed a notice of responses on the above date and the Commission staff confirms that it was served with the

utility's responses to subparts (d) and (f). Therefore, OPC's motion as to this item is moot.

Interrogatory No. 129 (c)

Interrogatory No. 129 pertains to travel and entertainment expenses for SSU. Subpart c requested, "To the extent not evident on the voucher, explain all codes used to charge expenses to different accounts, systems, and companies." In its response to OPC's motion, the utility states, in pertinent part,

Southern States provided Public Counsel with a chart of accounts for cross reference of codes appearing on the vouchers in addition to all accounting manuals used by the Company. In addition, Public Counsel was provided listings of all plant and company numbers.

The utility did not submit an affidavit confirming the above, nor did it serve the referenced information on the Commission staff. In addition, the utility's response to the interrogatory says nothing about the codes used to charge expenses. Therefore, it appears that the utility failed to comply with this discovery request, and I require the utility to provide the information requested within five days of the date of this Order.

Interrogatory No. 132

OPC argues that the "Appendix B" referenced in the utility's response to Interrogatory No. 132 was not provided. The response to the interrogatory does refer to an "Appendix B"; however, in its response to OPC's motion, the utility explains that the information was provided, but the appendices were mislabelled. The appendix in question was among materials filed for which the utility is seeking confidential treatment. Therefore, I find OPC's motion as to this item moot.

Document Request No. 1

Document Request No. 1 solicited diskettes that would show all answers to OPC interrogatories. In its response to the document request, the utility stated it would provide diskettes at the completion of all interrogatories. OPC states in its motion that the utility's response is not acceptable and that the utility should provide a diskette of responses at the completion of each set of discovery. In its response to OPC's motion, the utility states that it only has to provide responses to discovery requests,

it does not have to produce diskettes, and that it only agreed to provide diskettes as a courtesy.

I note that OPC's document request did not suggest the frequency with which diskettes should be provided. This notwithstanding, within five days of the date of this Order, the utility shall produce all diskettes in its possession which presently contain interrogatory responses.

Document Request No. 2

Document Request No. 2 solicited diskettes of "all electronic schedules and work papers created in the process of filing or revising the current rate increase request." In its motion, OPC complains that the utility only provided some diskettes, specifically those showing MFR Schedules A, B, F, and part of E. OPC states it believes there are numerous other diskettes for portions of the MFRs and for work papers created in support of the MFRs. In its response, the utility states, "The Company provided all diskettes which were readily available for production, in this case, diskettes for Schedules A, B, E and F of the MFRs."

I think it appropriate to compel a response to Document Request No. 2. The utility must produce within five days of the date of this Order all diskettes in its possession, not just those which are "readily available."

Document Request No. 6

In its motion, OPC claims that there are several aspects of Document Request No. 6 with which the utility has not complied. In pertinent part, Document Request No. 6 asked for copies of "journal entries, journals, supporting workpapers, invoices and vouchers, general ledger, and supporting ledgers for the current year and the most recent historic year." First, OPC complains that despite repeated requests to review the utility's vendor files, the utility has refused to comply. In its response to OPC's motion, the utility states, and supports by affidavit, that OPC was provided access to vendor files and given the opportunity to review those files drawer by drawer "under supervision by a Company employee," but OPC chose not to do so.

As before, given the circumstances, I do not find that the utility failed to comply with the discovery request, but I require the utility to provide access to the subject vendor files at OPC's convenience. If the utility provides access to the vendor files,

it may do so with a utility employee present, provided the utility employee does not obstruct OPC's legitimate review of documents.

Under the rubric of Document Request No. 6, OPC also complains that the utility failed to respond to certain OPC "on-site audit requests." OPC asks that the utility be compelled to produce answers to on-site audit request nos. 6 and 11, the substance of which OPC does not describe, and on-site audit request no. 22, which evidently sought journal entry information concerning the sale of St. Augustine Shores. In its response to OPC's motion, the utility explains that the referenced requests were made outside formal discovery procedures and that the utility already provided the information.

OPC also complains that the utility did not comply with on-site audit request no. 23, which requested "copies of journal entry information from microfiche." OPC asserts, "The Company only provided the information requested to the extent that the entire file was not contained on microfiche." OPC states that it requires "copies of the journal entry information for all items identified, not just for those that were incomplete." In its response, the utility contests, "Public Counsel was provided copies of all journal entry information not presented on microfiche."

OPC's motion does not explain the procedural validity of any of the on-site audit requests it refers to, nor does it relate the substance of requests nos. 6 and 11. In addition, neither the substance of request no. 23 nor the utility's response to OPC's motion are sufficiently clear for a determination of propriety. Therefore, I hereby direct OPC to file the subject on-site audit requests (6, 11, 22, and 23) and direct the utility to file its responses to these requests within seven days of the date of this Order. Ruling is reserved.

Document Requests Nos. 14 & 18

Document Request No. 14 sought copies of all variance reports and variance explanations used by managers to monitor and control budgets for 1989 through year-to-date 1992. Document Request No. 18 sought any narrative operating plans which describe the utility's corporate goals and objectives for the years 1989 through 1993. In its motion, OPC states that, with regard to Document Request No. 14, the utility failed to provide the budgeted data for 1992 even though it did not object and that, with regard to No. 18, the utility failed to provide budgeted data for 1992 and 1993 even though it did not object. In its response to OPC's motion, the

utility states, and supports by affidavit with regard to Document Request No. 14, that all budgeted information in existence was provided.

I do not think a party is required to file an objection to a discovery request if it does not have the information sought by the request. It is sufficient that the party, in its response, state that the information does not exist. Therefore, I deny OPC's motion with regard to this item.

Document Request No. 28

Document Request No. 28 asked for a copy of each bonus and incentive compensation plan in use and the annual cost to the utility for 1989 through 1991. OPC claims that the utility failed to provide the historical data requested. In its response, the utility states, and supports by affidavit, that historical data was provided.

The response which the utility served on Commission staff does not indicate whether the plan provided was in effect for the years 1989 or 1990, and the plan served is dated April 10, 1991. Therefore, I compel the utility to more fully respond to this Document Request within seven days of the date of this Order.

Document Request No. 30

Document Request No. 30 asked for a copy of all federal and state income tax returns for 1988, 1989, 1990, and 1991, including a complete copy of the consolidated schedules and work papers. In its motion, OPC claims that the utility refused to provide copies of income tax information dealing with the St. Augustine shores sale. OPC also claims, "The Company has also refused to provide copies of other tax information requested at the on site Audit, apparently alleging that the material is confidential." OPC points out that it agreed to confidential treatment. In its response to OPC's motion, the utility states that it allowed OPC to review the tax documents regarding St. Augustine Shores sale, along with all of the other tax documents requested, when OPC was at the utility's office.

The utility's claim in its response to OPC's motion is not supported by affidavit, and OPC does not specify what "other" documents it complains it was not allowed to review. Therefore, under the circumstances, I require the utility to provide access to the subject tax information at OPC's convenience.

Document Request No. 45

Document Request No. 45 asked for "a complete set of workpapers for any amount or adjustment which appears in the Company's filing which is not associated with the consultants' compilation." OPC claims in its motion that the utility has not produced the workpapers. In its response to the document request, the utility stated that the materials were too voluminous to copy, and it offered to allow OPC to review the material at its office. In its response to OPC's motion, the utility states, and supports by affidavit, that it provided all existing workpapers and that "the portions of the MFRs for which no workpapers were available were created by a download of computer data from the general ledger and thus workpapers do not exist."

In consideration of the foregoing, I do not find that the utility failed to comply with the discovery request, but require it to provide access to the subject workpapers at OPC's convenience.

Document Request No. 46

Document Request No. 46 asked for, "A complete, fully indexed, and cross-referenced set of work papers supporting the testimony and exhibits of each utility's sponsored witness." OPC claims the utility has failed to produce all of the requested documents. In its response to OPC's motion, the utility states, and supports by affidavit, that all existing workpapers were provided.

I note that by Order No. PSC-92-0819-PCO-WS, issued August 14, 1992, I disposed of the utility's objection to the formatting requirement in OPC's request and ordered the utility to produce the information by August 21. I do not find that the utility failed to comply with the discovery request, but I require it to provide access to the subject workpapers at OPC's convenience.

Document Request No. 90

OPC claims that "Appendix A" referred to in the response to Document Request No. 90 is missing. In its response to OPC's motion, the utility states it made no reference to an "Appendix A" in its response.

The response to this document request makes no reference to an appendix; it merely indicates that to the extent the requested information was not already provided, it is available for review at

the utility's office. Therefore, OPC's motion is denied as to this item.

Interrogatory No. 273

Interrogatory No. 273 solicited a schedule elaborating certain aspects of the utility's miscellaneous expenses. In its motion, OPC claims that the "Appendix 273" referred to in the response was missing. In its response to OPC's motion, the utility states that the reference to "Appendix 273" was an error and that the pertinent information is contained in "Appendix 41-A," which was provided in response to Interrogatory No. 41. Appendix 41-A, which contains a breakdown by subaccount of certain expenses including miscellaneous expenses, appears to contain the information requested. Therefore, OPC's motion as to this item appears moot.

Conclusion

This Commission's role in the discovery process is to resolve bona fide disputes under the law. It is evident from the above that much of what OPC complains of could have been resolved by better communication between the parties. Therefore, I direct that all future discovery motions, objections, requests for clarification, and responses to same which are filed either by the utility or OPC shall contain a statement by counsel that he or she has conversed with opposing counsel regarding the substance of the disputed matter prior to making any such filing, along with a brief summary of the conversation.

MOTION FOR ADDITIONAL TIME

In its Motion for Additional Time in Which to File Testimony, OPC argues that the delay in obtaining discovery from the utility has crippled its case. It argues,

"Although much of the delay in complying with discovery has been the fault of SSU not all of it has been. Despite the time allotted to discovery being of the essence, Order no. PSC-92-0891-PCO-WS which was issued on August 14, 1992, resolved issues which were ripe for decision as early as June 13, 1992." (Footnote omitted)

OPC points out that despite voluminous objections, SSU has prevailed only on rare occasion. OPC argues it cannot fashion a case in the time which remains.

"The citizens recognize that a delay of the time for filing testimony may well dictate a delay in the hearing However, the interim rates awarded by the Commission on August 18, 1992, comprised 87% of the applicant's requested rates; there is no material prejudice to any party in a delay."

In its prayer for relief, OPC asks that the Prehearing Officer determine the time at which the earliest overdue discovery was due and enter an order postponing the time for filing intervenor testimony by the same number of days.

In its response, the utility states that it has responded to over 1,050 OPC discovery requests and that its alleged failure to respond to only 17 does not justify a delay in filing testimony or the hearing.

OPC's motion is hereby denied. As noted in Order No. PSC-92-0881-PCO-WS, issued August 27, 1992, the parties agreed at a June 25 meeting that responses to interrogatories or request for production from the OPC's first set of discovery would be due on July 22. Because of this agreement, there were no "issues which were ripe for decision as early as June 13" as OPC represents. Furthermore, OPC elected to file its motion to compel on August 25 when, as noted above, the bulk of the discovery which it complains of was due July 22. If OPC is prejudiced by the utility's failure to respond, OPC bears part of the responsibility for not filing its motion to compel earlier. In addition, had OPC strived to narrow the scope of its disputes with the utility, the Commission would be better equipped to evaluate the seriousness of the utility's alleged recalcitrance. However, as is evident from the above, much of what OPC complains of appears to be mere misunderstandings. Finally, I note that pursuant to Order No. PSC-92-0905-PCO-WS, issued September 1, 1992, OPC was granted additional time, until October 5, 1992, to file its prepared testimony. In consideration of the above, I believe OPC has sufficient time to prepare its testimony. OPC's argument that no prejudice would result by a delay in the hearing as a result of granting its motion is without merit. If there were no prejudice in such a delay, the Legislature never would have required that the Commission process cases within a set period of time to begin with.

Based upon the foregoing, it is

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that the Office of Public Counsel's August 25, 1992, Motion to

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Compel is denied in part and granted in part as set forth in the body of this Order. It is further


ORDERED that Southern States Utilities, Inc., and Deltona Utilities, Inc., are hereby directed to respond to the pertinent portions of Office of Public Counsel's discovery as set forth in the body of this Order. It is further

ORDERED that the Office of Public Counsel is directed to file its on-site audit requests nos. 6, 11, and 22, 23 and Southern States Utilities, Inc., and Deltona Utilities, Inc., are directed to file its responses to said requests within seven days of the date of this Order. It is further

ORDERED that all future discovery motions, objections, requests for clarification, and responses to same which are filed either by Southern States Utilities, Inc., and Deltona Utilities, Inc., or the Office of Public Counsel shall contain a statement by counsel that he or she has spoken with opposing counsel regarding the substance of the filed matter, along with a brief summary of the conversation. It is further

ORDERED that the Office of Public Counsel's August 25, 1992, Motion for Additional Time to File Testimony is denied.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 23rd day of September, 1992.


BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

MJF

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

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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, gas or telephone utility, or the First District Court of Appeal, in the case of a water or sewer 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.