

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate ) DOCKET NO. 920655-WS  
increase in Collier County by ) ORDER NO. PSC-92-1463-PCO-WS  
Marco Island Utilities ) ISSUED: 12/17/92  
(Deltona) )  
\_\_\_\_\_ )

ORDER GRANTING PUBLIC COUNSEL'S THIRD MOTION  
TO PERMIT ADDITIONAL INTERROGATORIES AND  
FIRST MOTION TO PERMIT ADDITIONAL REQUESTS AND  
DENYING PUBLIC COUNSEL'S MOTION TO STRIKE PORTION OF RESPONSE

On September 30, 1992, Order No. PSC-92-1080-PCO-WS, Order Establishing Procedure, was issued in the above-referenced docket. Pursuant to the Order Establishing Procedure, discovery was limited to 150 interrogatories, including subparts and 75 requests for production of documents, including subparts. By Order No. PSC-92-1177-PCO-WS, issued October 19, 1992, the Prehearing Officer granted the Office of Public Counsel's (OPC) request to submit its entire first set of interrogatories and revised the Order Establishing Procedure to permit a total of 200 interrogatories. By Order No. PSC-92-1316-PCO-WS, issued November 13, 1992, OPC's Second Motion to Permit Additional Interrogatories was granted to allow OPC's second set of interrogatories. As a result, the limit was increased to 215.

In addition to expanding the number of interrogatories, Order No. PSC-92-1316-PCO-WS also stated that service of additional interrogatories must be preceded by a filing with the Commission of a motion to permit additional interrogatories, accompanied by a copy of the interrogatories to be served. In that Order, it was specifically stated that the utility shall not be obligated to answer the interrogatories unless and until the Prehearing Officer issues an order permitting additional interrogatories.

On November 19, 1992, OPC hand-delivered its Third Set of Interrogatories and Third Request for Production of Documents to Southern States Utilities, Inc. (Southern States or utility) and Staff Counsel. On November 20, 1992, OPC filed its Third Motion to Permit Additional Interrogatories and First Motion to Permit Additional Requests for Production of Documents. In its motion, OPC states that it did not receive a copy of Order No. PSC-92-1316-PCO-WS until November 20, 1992, and was unaware of the Prehearing Officer's order to file a motion to permit additional interrogatories along with the discovery request. OPC's third set of interrogatories contains 65 additional interrogatories, including subparts. The total number of interrogatories now served

DOCUMENT NUMBER-DATE

14620 DEC 17 92

PSC-RECORDS/REPORT

on the utility by OPC is 280. The total number of requests for production of documents served on Southern States is 76.

On November 25, 1992, Southern States filed a Response to Public Counsel's Third Motion to Permit Additional Interrogatories and First Motion to Permit Additional Document Requests. In its response, the utility asserts that: 1) Public Counsel's motion is deficient in that it fails to attach a copy of the additional discovery requests as required by Order No. PSC-92-1316-PCO-WS and 2) OPC has failed to justify a third expansion of the number of interrogatories.

In its response, the utility requests that the Commission: 1) require OPC to submit a revised third motion to permit additional interrogatories and first motion to permit additional requests for production of documents, attaching the third set of interrogatories and production of documents; 2) determine that OPC has failed to establish good cause for a third expansion of the discovery limitations; 3) grant the utility 30 days from the date of this Order to respond to OPC's discovery, if the Prehearing Officer grants OPC's third request for expansion.

On December 2, 1992, OPC submitted a Motion to Strike Portion of Response, whereby OPC requests that the Commission strike Paragraph 4 of Southern State's response. Paragraph 4 states:

Later that same day, November 20, 1992, counsel for Southern States received Public Counsel's Third Motion to Permit Additional Interrogatories and First Motion to Permit Additional Requests for Production of Documents. Public Counsel's motion is deficient in that it fails to attach a copy of the additional discovery requests as required by the Prehearing Officer's Order.

OPC states that the utility's representation of OPC's motion to permit additional discovery is not offered in good faith and is contrary to the verbal agreement made with the utility's counsel on November 19, 1992. OPC contends that counsel for Southern States and OPC agreed the motion to permit additional discovery would be filed November 20, 1992, and attached to the discovery request already supplied to the utility and Staff Counsel on November 19th.

On December 3, 1992, Southern States filed a Response to Public Counsel's Motion to Strike Portion of Response, whereby the

utility requests that the Prehearing Officer enter an Order denying OPC's Motion to Strike Portion of Response.

The Orders involving discovery in this docket, discussed above, stated that OPC must show good cause for any further interrogatory requests. OPC maintains that there is good cause for again exceeding the discovery limit. OPC asserts that the information solicited in this third set is all relevant information which the Commission needs in deciding the issues that will be presented in this docket. OPC further asserts that most of the interrogatories are follow-up questions to information supplied to OPC in response to its First and Second Sets of Discovery.

OPC requests, in its Motion, that the Commission grant OPC latitude to propound additional interrogatories, as necessary, so long as they are relevant and the request does not represent an undue burden upon the utility. OPC further requests that the 30-day time limit should still begin from the date the discovery was served. "If the Prehearing Officer intended for this 30 day time limit to be tolled until after any new order might be issued, the Citizens would implore the Commission to issue such an order on an expedited basis since there is so little time left before the deadline for intervenor prefiled testimony."

In reviewing OPC's interrogatories and production of documents, it appears that the requests are reasonable and relevant to this docket. For that reason, it is appropriate to allow OPC to serve its entire third set of interrogatories and requests for production of documents. Furthermore, in attempting to eliminate some of the unnecessary excess of paperwork and in anticipation of additional discovery, it is also appropriate to expand, but limit discovery to 450 interrogatories and 150 requests for production of documents. It is imperative that subsequent discovery requests seek information relevant to this docket.

Order No. PSC-92-1316-PCO-WS specifically ordered that service of additional interrogatories must be preceded by a filing with the Commission to permit additional interrogatories. This language is clear. Although OPC did not comply with that Order, OPC filed the motion to permit additional interrogatories within one day of serving discovery.

Order No. PSC-92-1316-PCO-WS was also clear in stating that the utility was not obligated to respond to discovery until a

ORDER NO. PSC-92-1463-PCO-WS  
DOCKET NO. 920655-WS  
PAGE 4

ruling on a prior motion regarding discovery. Therefore, Southern States shall respond to OPC's third set of discovery within 30 days of issuance of this Order. If a party wishes to exceed the limits to discovery set forth in this Order, such discovery must be preceded by a motion to permit additional interrogatories and production of documents, accompanied by a copy of the discovery.

Furthermore, since the request to expand discovery has been granted and based on the facts as stated above, OPC's Motion to Strike Portion of Response and the utility's response are moot.

Based upon the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the Office of Public Counsel's Third Motion to Permit Additional Interrogatories and First Motion to Permit Additional Document Requests is granted. It is further

ORDERED that the Office of Public Counsel's Motion to Strike Portion of Response is denied. It is further

ORDERED that Southern States Utilities, Inc., shall have 30 days from the issuance of this Order to respond to Public Counsel's Third Set of Interrogatories and Third Set of Production of Documents. It is further

By ORDER of Susan F. Clark, as Prehearing Officer, this 17th day of December, 1992.

  
\_\_\_\_\_  
SUSAN F. CLARK, Commissioner  
and Prehearing Officer

( S E A L )

LAJ

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, 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.