

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Emergency Complaint of) DOCKET NO. 941165-PU
Peoples Gas System, Inc.,) ORDER NO. PSC-95-0182-PCO-PU
Against Tampa Electric Company) ISSUED: February 8, 1995
for Providing Unauthorized)
Incentives for Electric Water)
Heating Appliances)
_____)

**ORDER DENYING MOTION FOR PROTECTIVE ORDER, GRANTING MOTIONS
TO COMPEL, GRANTING MOTION FOR EXPEDITED DISCOVERY SCHEDULE,
DENYING REQUEST FOR HEARING BEFORE THE PREHEARING
OFFICER, AND DENYING MOTION FOR LEAVE TO STRIKE
DEFENSE OUT OF TIME**

On December 14, 1994, TECO filed a Motion to Compel Peoples Gas to respond to its First set of Interrogatories. Thereafter, on January 6, 1995, in response to Commission Orders Nos. PSC-95-0018-FOF-PU and PSC-95-0018A-FOF-PU, issued January 5, 1995, and January 10, 1995, respectively, TECO filed its Amended First Set of Interrogatories, a Second Set of Interrogatories, and a First Request for Production of Documents. In addition, TECO filed a Motion for Expedited Discovery Schedule, an Amended Motion to Compel, and a Request for Hearing Before the Prehearing Officer. On January 13, 1995, Peoples filed a Motion for Protective Order, a Motion for Leave to File a Motion to Strike TECO's Affirmative Defense Out of Time, a Motion to Strike TECO's Affirmative Defense, and a Response to TECO's Motion for Expedited Discovery and Request for Hearing. On January 19, 1995, TECO filed Memoranda in Opposition to Peoples' Motion for Protective Order and to Peoples' Motion to Strike. On January 31, 1995, TECO filed a Supplemental Motion to Compel.

Discovery Motions

As a result of negotiations between TECO and Peoples, some of the pending discovery disputes were resolved. The following discovery requests are outstanding and the subject of TECO's Motions to Compel and Peoples' Request for a Protective Order: 1) Interrogatories Nos. 3, 7, 10, 11, 19, 20, 21, 28, 29, 39, 41, and 69; 2) Interrogatories Nos. 42 and 43; and 3) Requests for Production of Documents Nos. 4, 9, and 10.

In its Motion for Protective Order, Peoples argues that it should not be compelled to answer questions which seek information on the functions and activities of its unregulated affiliates or pertaining to the administration of its tariff. Peoples asserts that such information is beyond the scope of this proceeding and

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therefore, irrelevant. Peoples also seeks protection on the basis that the interrogatories seek proprietary, confidential business material.

Specifically, as to Interrogatories Nos. 3, 7, 10, 11, 19, 20, 21, 28, 29, 39, 41, and 69, Peoples asserts that it has answered these interrogatories to the extent that they pertain to Peoples' activities within the Meadow Pointe subdivision. Peoples argues that the remaining, unanswered portions of these interrogatories ask for information which is irrelevant because they ask for information pertaining to Peoples' unregulated affiliates.

As to Interrogatories Nos. 42 and 43, Peoples argues that Nos. 42 and 43 request information pertaining to the administration of Peoples tariff and normal expansion operations and, therefore, are beyond the scope of this docket and should be protected as proprietary, confidential business information.

As to the Requests for Production of Documents, Peoples argues that Request No. 4 is beyond the scope of the docket because it pertains to activities of its unregulated affiliates. Peoples seeks protection from answering Requests Nos. 9 and 10 on the basis that these requests seek information concerning proprietary, confidential business relationships with builders and developers.

In its pleadings, TECO argues that any incentive programs and give-aways initiated by Peoples' affiliates would have the same effect as though Peoples were providing those incentives. Therefore, the actions of the affiliates in Meadow Pointe subdivisions should be discoverable. TECO further argues that because water heater sales by Peoples' affiliate (Peoples Sales and Service) and the Leisure Package furnace venting program are being funded by Peoples' Home Builder program, the actions of the affiliates are relevant to this proceeding.

Based on review of the pleadings, the actions of Peoples' affiliates in advertising or sales at the Meadow Pointe subdivision may lead to the discovery of relevant evidence. Therefore, Peoples' Request for Protective Order on discovery related to actions of Peoples' affiliates is hereby denied and TECO's Motion to Compel is hereby granted. Peoples shall answer Interrogatories Nos. 3, 7, 10, 11, 19, 20, 21, 28, 29, 39, 41, and 69, and Request for Production No. 4. However, Peoples shall answer these interrogatories only to the extent that the actions of the affiliates occurred at Meadow Pointe subdivision. To the extent that Peoples believes any of the information requested constitutes proprietary, confidential business information, Peoples should request protection for that information in the manner provided by

the Florida Statutes, Commission Rules, and the Order Establishing Procedure No. PSC-95-0178-PCO-PU, issued February 8, 1995.

As to Interrogatories Nos. 42 and 43 and Requests for Production Nos. 9 and 10, Peoples' Request for Protective Order is also denied. Information relating to Peoples' implementation of its tariff in Meadow Pointe and any incentives it may give builders should be discoverable as it may lead to the discovery of relevant evidence. Further, as stated above, Peoples may seek confidential treatment of information it believes is entitled to be protected as such through the normal Commission process for such requests. Therefore, Peoples is hereby compelled to respond to Interrogatories Nos. 42 and 43 and Requests for Production Nos. 9 and 10.

TECO's Motion for Expedited Discovery Schedule is granted to the extent that all interrogatory responses and document production shall be served no later than February 20, 1995.

Motion for Leave to File Motion to Strike Out of Time

In its Motion for Leave to File a Motion Out of Time, Peoples asserts a "good faith" misunderstanding of the Rules of Civil Procedure as the reason for the tardiness of this filing. The Motion to Strike argues that TECO's pleading of the affirmative defense of equitable estoppel is legally insufficient and should be stricken.

In its Memorandum in Opposition to Peoples' Motion, TECO argues that Peoples' Motion for Leave to File Motion to Strike Affirmative Defense Out of Time should be denied because Peoples waived the right to file such a motion. In addition, TECO argues that its affirmative defense is, in fact, legally sufficient in that it puts Peoples on notice as to the nature of the defense.

Upon consideration, not only does TECO's affirmative defense provide sufficient notice of the defense asserted, Peoples has waived the right to have this defense stricken by not timely filing a motion to strike within the period prescribed by Rule 1.140(b), Florida Rules of Civil Procedure. Peoples' Motion for Leave to File Motion to Strike Affirmative Defense Out of Time is, therefore, denied. It is emphasized, however, that TECO may only argue this affirmative defense within the scope of Peoples' original Complaint and as defined and clarified by Orders Nos. PSC-95-0018-FOF-PU and PSC-95-0018A-FOF-PU.

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Request for Hearing Before the Prehearing Officer

Oral argument on these pending motions is denied. The pleadings are sufficient for a fully informed decision.

Based on the foregoing, it is therefore

ORDERED that Peoples Gas System, Inc., is hereby compelled to respond to Interrogatories Nos. 3, 7, 10, 11, 19, 20, 21, 28, 29, 39, 41, 42, 43, and 69 and Requests for Production of Documents Nos. 4, 9, and 10, to the extent set forth in the body of this order, no later than February 20, 1995. It is further

ORDERED that Peoples Gas System, Inc.'s, Motion for Protective Order is denied. It is further

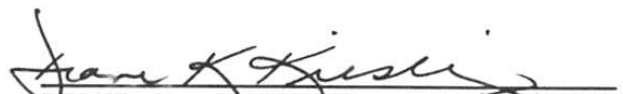
ORDERED that Tampa Electric Company's amended Motion to Compel Peoples Gas System, Inc., to Answer Interrogatories and Supplemental Motion to Compel Peoples Gas System, Inc., to Answer Tampa Electric's Second Set of Interrogatories and First Request for Production of Documents are granted, as set forth in the body of this order. It is further

ORDERED that Tampa Electric Company's Motion for Expedited Discovery Schedule is granted to the extent discussed in the body of this order. It is further

ORDERED that Tampa Electric Company's Request for Hearing Before the Prehearing Officer is denied. It is further

ORDERED that Peoples Gas System, Inc.'s, Motion for Leave to File Motion to Strike Affirmative Defense Out of Time and Motion to Strike are denied.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 8th day of February, 1995.


DIANE K. KIESLING, 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, 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.