

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.

DOCKET NO. 950495-WS
ORDER NO. PSC-99-1199-PCO-WS
ISSUED: June 14, 1999

ORDER GRANTING, IN PART, AND DENYING, IN PART,
FLORIDA WATER SERVICES CORPORATION'S MOTION TO
TOLL TIME FOR SERVICE OF RESPONSES TO
OFFICE OF PUBLIC COUNSEL'S SECOND SET OF INTERROGATORIES AND
THIRD AND FOURTH REQUESTS FOR PRODUCTION OF DOCUMENTS ON REMAND

On April 12, 1999, Florida Water Services Corporation (Florida Water) filed its Motion for Abatement and Continuance. In moving for an abatement, the utility stated that it was filing an action in the appellate court contesting the Commission's actions regarding one order establishing issues and two orders on discovery. The utility stated that judicial economy would be enhanced by resolving pending issues affecting the scope of discovery and issues for hearing prior to engaging in further discovery, preparation and submission of testimony, and participation in the final hearing on remand.

Based on these representations, Order No. PSC-99-0800-PCO-WS (Order on Abatement), issued April 21, 1999, specifically granted the utility's request for abatement. On April 9, 1999, twelve days prior to the issuance date of the Order on Abatement, the Office of Public Counsel (OPC), submitted its Second Set of Interrogatories and Third Request for Production of Documents. On April 30, 1999, OPC submitted its Fourth Request for Production of Documents.

In response to these discovery requests, on April 19, 1999, the utility filed its objections to a portion of OPC's Second Set

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of Interrogatories and Third Request for Production of Documents, and, on May 6, 1999, its objections to a portion of the OPC's Fourth Request for Production. Also, on May 6, 1999, the utility filed its Motion to Toll Time for Service of Responses to OPC's Second Set of Interrogatories and Third and Fourth Requests for Production of Documents on Remand (Motion to Toll Time).

In its response to the utility's Motion to Toll Time, the OPC states that it will not engage in further discovery requests until such time as the appellate proceedings have been concluded. Also, OPC agrees that the time for any response to its Fourth Request for Production should be suspended and tolled until the utility's appellate action is completed. However, OPC states that the suspension should apply to only any "further discovery" subsequent to the entry of the Order on Abatement, and not to the discovery submitted prior to the issuance of that Order. Therefore, OPC requests that the utility be required to timely respond to previously filed discovery requests to which the utility does not object. OPC states that "the timely collection of this unobjected to material will enhance judicial economy by permitting the bdiscovery of information that even Florida Water believes is appropriate and within the scope of the District Court's mandate, and will be required for any ultimate hearing before the Commission."

In considering the difference between an abatement and a continuance, the First District Court of Appeal, in Togo's Eatery of Florida, Inc. v. Frohlich, 526 So. 2d 999, 1001 (Fla. 1st DCA 1988), noted that "[t]o abate means to suspend or put an end to an action, . . . while to continue an action means to postpone it to a future date." Therefore, from the time of the issuance of Order No. PSC-99-0800-PCO-WS, all further discovery actions were suspended. Therefore, the utility's Motion to Toll Time on the Fourth Request for Production is granted. However, the discovery submitted on April 9, 1999, cannot be said to be "further discovery," and its suspension could not be said to promote or enhance judicial economy. Therefore, the utility's Motion to Toll Time on the Second Set of Interrogatories and Third Request for Production is denied. The utility shall respond to those portions of OPC's Second Set of Interrogatories and Third Request for Production of Documents to which it has not raised specific objections within 23 days of the effective date of this Order. However, any further discovery actions shall be suspended pending the outcome of the utility's current appellate action.


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Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the Motion of Florida Water Services Corporation to Toll Time for Service of Responses to Office of Public Counsel's Fourth Request for Production of Documents and any further discovery requests shall be granted. It is further

ORDERED that Florida Water Services Corporation's Motion to Toll Time for Service of Response to Office of Public Counsel's Second Set of Interrogatories and Third Request for Production of Documents is denied. The utility shall respond to those portions of the discovery to which it has raised no objection within 23 days of the effective date of this Order.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 14th day of June, 1999.



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 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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.