

**STATE OF FLORIDA
PUBLIC SERVICE COMMISSION**

IN RE: Application For Certificate To)
Provide Water Service In Volusia)
And Brevard Counties By Farmton)
Water Resources, LLC)

DOCKET NO. 021256-WU

**Response to Farmton's Objection to Interrogatories
and Motion to Compel Answers to Interrogatories**

Pursuant to Florida Rule of Civil Procedure 1.380, and Florida Administrative Code Rules 28-106.204 and 28-106.206, the City of Titusville, Florida ("Titusville") moves on the following grounds for an order compelling Farmton Water Resources, LLC. ("Farmton") to respond to Titusville's First Set of Interrogatories.

1. On June 25, 2003, Titusville served its First Set of Interrogatories to Farmton. A copy of Titusville's First Set of Interrogatories is attached as Exhibit "A."

2. On July 7, 2003, Farmton served its Objections to Titusville's First Set of Interrogatories. Farmton stated a "General Objection" to Titusville's interrogatories on the grounds that the interrogatories call for "documents which are privileged, work product or afforded similar or analogous protections under Florida law." Farmton goes on to assert that "this general objection is applicable to each and every Interrogatory as set forth herein." Farmton's Objections do not set forth any interrogatories, but apparently Farmton is referring to the interrogatories propounded by Titusville.

3. In its Objections, Farmton indicates that it will "identify documents it has knowledge of within the analysis or research it conducted that it intends to rely upon in satisfying the requirements of Rule 25-20.033(1)(t), F.A.C." As to the other specific information requested within the scope of Titusville's interrogatories Farmton's Objections is silent, except for the general objection noted in paragraph 2, above. The most reasonable inference is that but for the

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indicated information related to Rule 25-20.033(1)(t), Farmton does not intend to respond to Titusville's Interrogatories.

4. The title of Farmton's Objections implies a request for extension of time, but no such request was specifically made in the document.

**Titusville's Interrogatories Are Clearly
Within The Scope of Discovery**

5. Florida Rule of Civil Procedure 1.280(b) provides "parties may obtain discovery regarding any matter, not privileged, that is related to the subject matter of the pending action." In the instant case, Farmton's application to the Public Service Commission ("Commission") for a Water Utility Service Area Original Certificate (the "Certificate") is the subject matter of the pending action. Titusville has a right to discover any evidence reasonably anticipated to lead to the discovery of admissible evidence regarding whether Farmton can comply with the conditions for approval of the Certificate, including the requirements in Florida Administrative Code Rules 25-30.030, 25-30.032, 25-30.033, which are Commission rules governing the application for the Certificate.

6. Use of interrogatories to directly elicit information from opposing parties regarding witnesses to be called and evidence to be presented at hearing is a common, time-honored method of expediting discovery, and is it explicitly authorized by Florida Rules of Civil Procedure 1.280 and 1.340. Each of Titusville's interrogatories is within the scope of these rules. Titusville's Second Interrogatory simply requests Farmton to identify the witnesses it intends to present at hearing. Each additional interrogatory propounded by Titusville is specifically crafted to elicit discovery directly related to Farmton's efforts to demonstrate compliance with applicable Public Service Commission rules. These interrogatories are clearly within the scope of discovery.

Farmton Failed to Properly Object to Interrogatories

7. Farmton cannot under the Florida Rules of Civil Procedure speciously reject Titusville's discovery request in total, even if, as Farmton alleges, its responses to interrogatories could include some information that may be privileged. Farmton's objections do not even identify a Florida Rule of Civil Procedure that may give rise to an assertable privilege or a basis for objection. If Farmton believes that some information within the scope of the interrogatories is privileged, it is still required to provide all responsive information that is not privileged. Farmton's objection, without any substantive responses to any of the interrogatories, implies that Farmton claims all the information requested in Titusville's First Set of Interrogatories is privileged. Such a broad claim of privilege is without merit and should be rejected.

8. Objections to discovery must comply with Florida Rule of Civil Procedure 1.280(5). Farmton's objections are not sufficiently specific to comply with the requirements of this rule, and should be rejected by the Hearing Officer. Florida Rule of Civil Procedure 1.280(5) requires that objections to discovery must be stated with specificity:

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

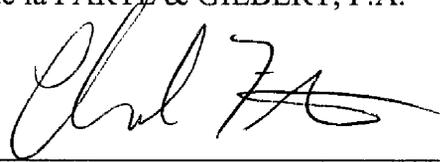
A Florida District Court of Appeal has consistently found that failure to properly assert privileges pursuant to Florida Rule of Civil Procedure 1.280(5) waves any such privilege. Omega Consulting Group, Inc. v. Templeton, 805 So. 2d 1058, 1060 (Fla. 4th DCA 2002); TIG Ins. Corp. of Am. v. Johnson, 799 So. 2d 339, 341-2 (Fla. 4th DCA 2001).

9. In compliance with Florida Administrative Code Rule 28-106.204, the undersigned counsel attempted to contact counsel for Farmton regarding this response and motion. Attempts were made by phone and e-mail, but no response has been received.

WHEREFORE, Titusville respectfully requests the presiding officer enter an order compelling Farmton to fully answer each interrogatory in Titusville's First Set of Interrogatories.

Respectfully Submitted,

de la PARTE & GILBERT, P.A.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Titusville's Response to Objection, Motion to Compel, and Motion for In Camera Inspection has been furnished by **Federal Express* and U.S. Mail** this ___ day of July, 2003, to the following:

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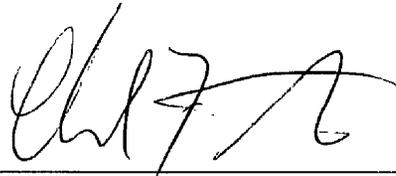
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Charles R. Fletcher

**STATE OF FLORIDA
PUBLIC SERVICE COMMISSION**

IN RE:)
)
Request for Admissions in the Farmton Public)
Service Commission)
Application for Water Service Area)
_____)

DOCKET NO. 021256-WU

**TITUSVILLE'S FIRST SET OF
INTERROGATORIES TO FARMTON**

Pursuant to Florida Administrative Code Rule 28-106.206 and Florida Rules of Civil Procedure 1.280 and 1.340, the City of Titusville, Florida ("Titusville") hereby serves its First Set of Interrogatories to Farmton Water Resources, LLC ("Farmton") and requests that Farmton serve its answers within the time period specified in the Florida Rules of Civil Procedure and Florida Administrative Code Rule 28-106.103 or within such shorter time established by the Hearing Officer.

PRELIMINARY STATEMENT

These interrogatories shall be answered by each party to whom they are directed or if that party is a public or private corporation, or partnership or association, or governmental agency, by an officer or agent, who shall furnish the information available to that party. Each interrogatory shall be answered separately and fully in writing under oath, unless the interrogatory is objected to in which event the grounds for objection shall be stated and signed by the attorney making it. An interrogatory otherwise proper is not objectionable merely because the answer to the interrogatory involves an opinion or contention that relates to fact or calls for a conclusion or asks for information not within the party's personal knowledge. The party or parties shall respond to such interrogatory by giving the information he or she has and the source of such information.

If any incomplete answers and/or improper objections are served in response to the follow-

ing interrogatories, the party serving these interrogatories may seek sanctions pursuant to the Florida Rules of Civil Procedure and other applicable law.

DEFINITIONS

As used in the following interrogatories:

A. "**Certificate**" shall mean an Original Certificate of Authorization and Initial Rates and Charges by the Florida Public Service Commission for Farmton to operate a water utility in Volusia and Brevard Counties pursuant to Chapter 367, Florida Statutes and Chapter 25-30, Florida Administrative Code.

B. "**Purposed Service Area**" shall mean the geographic area described in Attachment A of Exhibit A and Exhibit H of Farmton's application for the Certificate.

INTERROGATORIES

Interrogatory No. 1.

Please identify by name, job title, employer, business address, business telephone number, home address and home telephone number each natural person who provided information utilized in answering these interrogatories, and identify the corresponding interrogatories for each person.

ANSWER:

Interrogatory No. 2.

Please identify by name, job title, employer, business address, business telephone number, home address and home telephone number each fact and each expert witness that Farnton may call at the hearing. For each expert witness listed below, state the substance of the facts and opinions to which each expert witness is expected to testify, and summarize the grounds for each opinion. If Farnton does not plan to call any expert witnesses, please state so below.

ANSWER:

Interrogatory No. 3.

Please identify all analysis or research conducted by Farmton that it will rely upon in providing reasonable assurances that Farmton's application for the Certificate will satisfy the criteria in Rule 25-30.033, Florida Administrative Code, including, but not limited to, the financial and technical ability of Farmton to provide the proposed services within the Proposed Service Area, whether the proposed provision of services is consistent with the applicable comprehensive plans, and whether the requested Certificate is in the public interest.

(a) In answering this interrogatory, please identify by name, job title, employer, business address, business telephone number, home address and home telephone number each officer, employee, agent, consultant and any other person or representative familiar with this analysis.

ANSWER:

(b) In answering this interrogatory, please identify all documents that were prepared and/or reviewed by Farnton's officers, employees, contractors, agents, and representatives in the analyses or research referenced above in response to this Interrogatory 3. Please identify each document by title, date the document was prepared, author of the document, and the present location of the document.

ANSWER:

Interrogatory No. 4.

Please identify all analysis or research conducted by Farmton to determine whether other utilities could potentially provide service within the Proposed Service Area.

(a) In answering this interrogatory, please identify by name, job title, employer, business address, business telephone number, home address and home telephone number each officer, employee, agent, consultant and any other person or representative familiar with this analysis.

ANSWER:

(b) In answering this interrogatory, please identify all documents that were prepared and/or reviewed by Farnton's officers, employees, contractors, agents, and representatives in the analyses or research referenced above in response to this Interrogatory 4. Please identify each document by title, date the document was prepared, author of the document, and the present location of the document.

ANSWER:

Interrogatory No. 5.

Please identify all analysis or research conducted by Farmton to determine the types of customers proposed to be served and the number of equivalent residential connections proposed to be served in the application for the Certificate.

(a) In answering this interrogatory, please identify by name, job title, employer, business address, business telephone number, home address and home telephone number each officer, employee, agent, consultant and any other person or representative familiar with this analysis.

ANSWER:

(b) In answering this interrogatory, please identify all documents that were prepared and/or reviewed by Farnton's officers, employees, contractors, agents, and representatives in the analyses or research referenced above in the response to this Interrogatory 5. Please identify each document by title, date the document was prepared, author of the document, and the present location of the document.

ANSWER:

Interrogatory No. 6.

Please identify all analysis or research conducted by Farmton to prepare any cost studies in support of the application for the Certificate, including any customer growth projections.

(a) In answering this interrogatory, please identify by name, job title, employer, business address, business telephone number, home address and home telephone number each officer, employee, agent, consultant and any other person or representative familiar with this analysis.

ANSWER:

(b) In answering this interrogatory, please identify all documents that were prepared and/or reviewed by Farmton's officers, employees, contractors, agents, and representatives in the analyses or research referenced above in response to this Interrogatory 6. Please identify each document by title, date the document was prepared, author of the document, and the present location of the document.

ANSWER:

