

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate increase)
in Marion, Orange, Pasco, Pinellas,)
and Seminole Counties by Utilities,)
Inc. of Florida.)
_____)

DOCKET NO.: 020071-WS
FILED: July 17, 2003

**MOTION FOR A FINDING THAT CITIZENS'
CURRENT OUTSTANDING DISCOVERY IS WITHIN
THE LIMITS SET BY ORDER PSC-02-1495-PCO-WS, OR IN
THE ALTERNATIVE, MOTION FOR MODIFICATION OF
ORDER NO. PSC-02-1495-PCO-WS**

The Citizens of the State of Florida, through their attorney, the Public Counsel, pursuant to Rule 28-106.204, Florida Administrative Code, hereby move for a finding that Citizens current outstanding discovery is within the limits set by Order PSC-02-1495-PCO-WS, or in the alternative, move for modification of Order No. PSC-02-1495-PCO-WS, to authorize the outstanding discovery.

As grounds, the Citizens submit:

1. On October 31, 2003, the Commission issued Order No. PSC-02-1495-PCO-WS, (hereinafter "Order 1495") titled "Order Establishing Procedure." That Order directed that interrogatories and requests for production of documents, including all subparts would be limited to 250, "unless subsequently modified by the Prehearing Officer." [Id, at p. 2].
2. On June 10, 2003, the Citizens propounded their fifteenth set of interrogatories (Nos. 190 through 199) and their fifteenth set of document production requests (Nos. 105-109) to UIF.
3. On June 19, 2003, UIF objected to the discovery enumerated above. Among other objections, UIF charged that the discovery exceeded the maximum allowed by the Commission.

4. Allowing five days for mailing, the discovery responses were due this week. Since the discovery has not been answered, it is now overdue. Accordingly, the Citizens are filing a Motion to Compel concomitant with this pleading. By this pleading, the Citizens seek to resolve the question of whether the current discovery exceeds the amount allowable by the Commission.

5. The Citizens seek the approval for current volume of their outstanding discovery through one of two alternative rulings: (1) a finding by the Commission that the current discovery is within the limits set by Order 1495 or; (2) a modification of Order 1495 allowing the current discovery.

6. The Citizens' fifteenth set of interrogatories extends from no. 190 through no. 199. The Citizens fifteenth set of document production requests extends from no. 105 through no. 109. By the nominal count, then, both forms of discovery are well within the limit of 250 imposed by Order No. 1495. Accordingly, the Citizens seek a finding to that effect.

7. UIF asserts, however, that the Citizens' interrogatories exceed 400. (UIF makes no statement as to the number of OPC's document production requests). The expansive difference between OPC's assessment and UIF's assessment lies in the interpretation of what constitutes a "subpart." This can be a difficult area where reasonable people may disagree. Suppose, for example, a party asked:

1. Please identify every witness you plant to call. Identify each by:
 - a. name
 - b. professional designation
 - c. address
 - d. telephone number
 - e. subject of testimony

If the discoveree intends to call ten witnesses, does the question above amount to fifty different interrogatories, or does it only amount to one interrogatory, or somewhere in between? Suppose the same question were posed in a different format, such as:

1. Please give the name, professional designation, address, telephone number and subject of testimony for each witness you intend to call.

Is the party seeking discovery penalized for using an “a., b., c., d., e.” format, in an effort to provide better organization for the benefit of the discoveree and the Commission?

8. The Citizens have no desire to have the Commission undertake a hairsplitting examination of all previous discovery and decide the type of questions posed in paragraph 7, above. As an alternative, therefore, the Citizens seek a modification to Order 1495, allowing the discovery in question.

9. UIF has filed for county specific rates for five separate counties. Within most of these counties, UIF operates more than one system. For all practical purposes, this multiplicity of counties and operating divisions has turned this proceeding into several different rate cases combined. In addition, UIF has contributed to the need for additional inquiry by its numerous refilings. UIF’s MFRs were filed several times before they met the minimum standards for clarity, accuracy and completeness. Moreover, UIF resubmitted its “E” schedules several more times because of substantial deficiencies. The Citizens have already been forced to file five separate motions to compel UIF to provide adequate responses to legitimate discovery.

10. Almost all of the discovery that is being sought is follow-up and clarification to answers provided by UIF in earlier discovery (e.g., interrogatory nos. 190, 192, 193, 194, 195). Other interrogatories are carefully designed to obtain precisely the type of information the Commission will

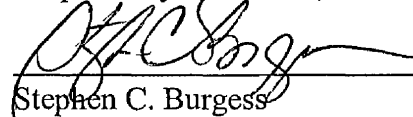
need to make informed decisions on issues relevant to the hearing. (e.g., interrogatory no. 196: “Please explain why Utilities, Inc. of Florida used only water customers to allocate WSC rate base amounts in the instant proceeding.”). OPC has not sought frivolous, needless or burdensome information. Rather, the discovery is necessary to illuminate central issues for the Commission’s edification.

11. Order No. 1495 admonished parties not to engage in discovery at the hearing itself (“Parties are cautioned against conducting discovery during cross-examination at the hearing.” Id, at p. 2). Mindful of this admonition, the Citizens are seeking to complete most avenues of inquiry prior to the hearing. An explanation of why UIF used only water customers for a particular allocation, for example, should be obtained in discovery, rather than at the hearing.

12. For all of these reasons, it is reasonable for OPC to obtain answers to its fifteenth set of interrogatories and its fifteenth set of document production requests. The Citizens therefore seek a ruling that the fifteenth sets of discovery are acceptable to the Commission.

WHEREFORE, the Citizens of Florida respectfully request the Commission to find that their current outstanding discovery meets the requirements set by Order PSC-02-1495-PCO-WS, or in the alternative, request a modification to Order PSC-02-1495-PCO-WS, authorizing the current outstanding discovery.

Respectfully Submitted,



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CERTIFICATE OF SERVICE
DOCKET NO. 020071-WS

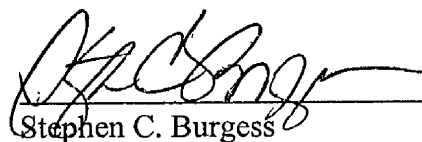
I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for a Finding that Citizens' Current Outstanding Discovery is Within the Limits Set by Order PSC-02-1495-PCO-WS, or in the Alternative, Motion for Modification of Order PSC-02-1495-PCO-WS has been furnished by hand delivery, facsimile and/or U.S. Mail to the following parties on this 17th day of July, 2003:

By U.S. Mail & Facsimile:

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