

August 25, 2022

E-PORTAL FILING

Mr. Adam Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re:

DOCKET NO. 20220067-GU

In re: Petition for rate increase by Florida Public Utilities Company, Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities Company - Fort Meade, and Florida Public Utilities Company - Indiantown Division.

Dear Mr. Teitzman:

Attached, for electronic filing in the above referenced docket, please find **Florida Public Utilities Company's Response in Opposition to Office of Public Counsel's Motion to Increase the Discovery Limits Established by Order No. 2022-0222-PDC-GU**

Should you have any questions whatsoever, please do not hesitate to contact me. Thank you for your assistance in this matter.



Gregory M. Munson
Florida Bar No. 188344
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1713

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Public Utilities Company, Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities Company - Fort Meade, and Florida Public Utilities Company - Indiantown Division.

DOCKET NO. 20220067-GU

FILED: August 25, 2022

FLORIDA PUBLIC UTILITIES COMPANY’S RESPONSE IN OPPOSITION TO OFFICE OF PUBLIC COUNSEL’S MOTION TO INCREASE THE DISCOVERY LIMITS ESTABLISHED BY ORDER NO. PSC 2022-0222-PCO-GU

Florida Public Utilities Company (“FPUC” or “the Company”), by and through undersigned counsel pursuant to rule 28-106.204, Fla. Admin. Code, files this Response in Opposition to Office of Public Counsel’s Motion to Increase the Discovery Limits Established by Order No. PSC 2022-0222-PCO-GU (“Motion”). In support, FPUC states the following:

1. On May 24, 2022, FPUC, including all of its natural gas divisions and the Florida Division of Chesapeake Utilities Corporation filed its Petition for Rate Adjustment, Approval of Depreciation Study, Approval of Consolidated Rate Structure and Request for Interim Relief, and *inter alia* the prefiled direct testimony and supporting exhibits of its witnesses and Minimum Filing Requirements (“MFRs”) and served the Office of Public Counsel with a copy of same.
2. On May 26, 2022, the Citizens of the State of Florida, through the Office of Public Counsel (“OPC”), filed its notice of intervention.
3. On May 31, 2022, FPUC provided hard copies of the petition including exhibits, testimony, and MFRs to the Commission, as well as the MFRs in native format (Excel) by

means of flash drives and DVDs. FPUC likewise provided a flash drive with the MFRs in native format to OPC.

4. Shortly thereafter, on June 2, 2022, OPC served FPUC with its First Set of Interrogatories (Nos. 1-120) and First Requests for Production (Nos. 1-59).

5. OPC filed its Second Set of Interrogatories (Nos. 121-122) on June 14, 2022.

6. On June 17, 2022, the Prehearing Officer entered an Order Establishing Procedure, providing that “Interrogatories, including all subparts, shall be limited to 300.” Order No. PSC-2022-0222-PCO-GU, Order Establishing Procedure, at p.4, V.A(1) (June 17, 2022). This aspect of the initial Order Establishing Procedure remains unchanged.

7. OPC served its Third Set of Interrogatories (Nos. 123-148), as well as additional Requests for Production, to the Company on July 22, 2022.

8. FPUC objected to OPC’s Third Set of Interrogatories (Nos. 123-148), stating “that it believes OPC’s Interrogatories, including subparts, to the Company have exceeded the number outlined in Order No. PSC-2022-0222-PCO-GU.”

9. Without waiving this objection, FPUC nonetheless responded in full to OPC’s Third Set of Interrogatories (Nos. 123-148).

10. OPC filed the Motion on August 18, 2022, seeking to increase the limitation on interrogatories established in the Order Establishing Procedure by 200 interrogatories over the initial 300 provided in the Commission’s June 17, 2022, Order Establishing Procedure.

11. A large disparity exists between the quantity of interrogatories as numbered by OPC (148), and the 369 actual, separate questions posed in OPC’s interrogatories, a difference of 221 additional interrogatories. *See* Motion at 3 (“OPC will accept FPUC’s estimate of 369 including subparts for purposes of our request for additional interrogatories.”).

12. The Commission has previously described the process for counting interrogatories. In the Order cited by OPC in the Motion, *In re: Application for increase in water and wastewater rates in Alachua, Brevard, DeSoto, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia and Washington Counties by Aqua Utilities Florida, Inc.*, Docket No. 080121-WS, Order No. PSC-08-0536-PCO-WS (F.P.S.C. August 18, 2008), the Commission explained the process it used to count interrogatories (emphasis added):

In some instances, OPC sought information or an explanation why certain expenses increased dramatically over a period of years with each year listed. Staff did not treat each year as a subpart as the real question appeared to be why was there a dramatic increase over the years. Moreover, when there were multiple adjustments to test year revenues in the test year, and OPC asked for an explanation for these adjustments, our staff did not treat this as having multiple subparts. This was also true of multiple adjustments for any one expense in the test year. In some interrogatories involving multiple systems, it was difficult to count the number of subparts as it would likely vary depending on AUF's answers. However, other than the exceptions noted above, when determining the total number of interrogatories served, staff counted each individual interrogatory and subpart as a separate question, and also attempted to count each clearly delineated compound question within an interrogatory or subpart as a separate question.

13. OPC cites this Order, but incorrectly places the emphasis on the “exceptions” and generally disregards the gist of this passage, which is to treat most subparts as individual questions. *See* Motion at ¶5.

14. The Commission's approach is consistent with Federal Rule of Civil Procedure 33,¹ governing interrogatories, for which the Notes of the Advisory Committee provide:

¹ Regarding interrogatories, the Uniform Rules of Procedure rely on Florida Rule of Civil Procedure 1.340. *See* rule 28-106.206, Fla. Admin. Code. “Florida Rule 1.340 is essentially an embodiment of Federal Rule 33 and as such, federal case law is highly persuasive in this area.” *Slatnick v. Leadership Hous. Sys. of Florida, Inc.*, 368 So. 2d 78, 80 (Fla. 4th DCA 1979).

Each party is allowed to serve 25 interrogatories upon any other party, but must secure leave of court (or a stipulation from the opposing party) to serve a larger number. Parties cannot evade this presumptive limitation through the device of joining as “subparts” questions that seek information about discrete separate subjects. However, a question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication.

15. Compared to other judicial and administrative forums, some additional interrogatories are justified by the Commission’s unique cases, process, and structure. It is worth noting, however, that the allegedly insufficient number of interrogatories in this case, 300, is literally an order of magnitude greater than those allowed under Florida Rule of Civil Procedure 1.340 (30 interrogatory limit) and Federal Rule of Civil Procedure 33 (25 interrogatory limit), which rules apply to many cases with comparable complexity.

16. To the extent OPC now needs additional questions, this need is due to its earlier decisions, largely associated with OPC’s First Set of Interrogatories (Nos. 1-120).

17. OPC’s First Set of Interrogatories (Nos. 1-120) really contained over 220 questions, including subparts.

18. OPC filed these 120 interrogatories on June 2, 2022, *before* the Commission entered the Order Establishing Procedure. OPC should have known that filing over 100 enumerated interrogatories (with over 200 separate questions) before knowing the maximum number allowed in this proceeding put them at risk for running short later in the case.

19. In addition, the OPC’s first set of interrogatories was filed only six business days after the Company’s initial filing and two days after the provision of flash drives containing the MFRs in native format. This timing strongly suggests the first 120 of OPC’s interrogatories were sent to FPUC without a thorough review of the specific facts of FPUC’s rate case.

20. This view is further supported by OPC's first 120 interrogatories. For example:
- a. "3. Please state whether you agree with the statement that the Company should seek the lowest reasonable weighted average cost of capital. If not, please explain why not."
 - b. "4. Please provide FPUC's forecasted growth rates for the following factors over the longest period available, and provide the source for such forecasts, as well as the time period for such forecasts, and the source of the information: (a) Total load; (b) Total customers; (c) Total revenue; (d) Net income; and (e) Rate base." (FPUC had provided all this information in the previously filed testimony and MFRs).
 - c. "13. Please provide all remaining life calculations in Excel format." Again, this information was largely available from previously filed testimony and exhibits.
 - d. "14. Please provide the average age of survivors as of the study date for each production plant by account." (FPUC correctly responded that "The Company does not generate power.")
 - e. "25. Please state whether the recorded vintage years of retirement have been modified in the historical data used to conduct the depreciation study. If so, please specifically identify such modifications by account." (This information had been previously provided in testimony and exhibits by FPUC.)
21. Contrary to OPC's assertion, many of these first 120 interrogatories were "immaterial" and "irrelevant." Motion at ¶6. FPUC nonetheless laboriously responded to each interrogatory, frequently providing pinpoint cites to its own testimony, exhibits, and MFRs.

22. If OPC had not been so profligate with interrogatories at the beginning of this matter, it would not need relief now. The Commission should not encourage such an unplanned approach to discovery by granting OPC's requested relief.

23. OPC argues that it "should have 300 interrogatories and PODs for each separate entity...." Motion at ¶10. OPC's argument is belied by its own approach to interrogatories, which includes the following definition:

"You", "your", "Company" or "FPUC" refers to Florida Public Utilities Company-Gas Division, Florida Public Utilities Company- Fort Meade, Florida Public Utilities Company-Indiantown Division, and Florida Division of Chesapeake Utilities Corporation, their employees, consultants, agents, representatives, attorneys of the Company, and any other person or entity action on behalf of the Company. "Parent" and Chesapeake Utilities Corporation ("CPK") means the holding company or parent of the Florida regulated Company. "Affiliate" means the affiliates or sister companies regulated in Florida or which are regulated by, or operate primarily in, another jurisdiction.

"FPUC," "Company" and "division(s)" means the data and information based on the individual corporate entities- Florida Public Utilities Company – Gas Division, Florida Public Utilities Company - Fort Meade, Florida Public Utilities Company-Indiantown Division, and Florida Division of Chesapeake Utilities Corporation, as they exist currently, post-consolidation, and/or prior to consolidation, as applicable.

24. Consistent with these definitions, the vast majority (likely exceeding 90%) of OPC's interrogatories are not directed at separate entities. OPC's assertion that it must separately ferret out information on each FPUC entity is inconsistent with its treatment of these entities in its interrogatories and should be given no weight.

25. The number of numbered interrogatories in this matter is, at this point, nearly tied with OPC's own count of interrogatories in previous cases, even inaccurately treating OPC's numbered questions as the correct number. *See* Motion at ¶9 (citing 187 and 165 interrogatories in previous gas rate cases).

26. OPC has had ample opportunity to conduct discovery by interrogatory. To the extent it believes more information is needed, it can avail itself of requests for production, requests for admission and, if necessary, depositions. The 369 questions already posed by OPC through interrogatories in this case is enough.

27. For the reasons given, herein FPUC requests that OPC's Motion be denied.

Respectfully submitted this 25th day of August, 2022, by:



Gregory M. Munson, Esquire
Florida Bar No. 188344
Gunster Law Firm
215 South Monroe Street
Suite 601
Tallahassee, FL 32301

Attorneys for Florida Public Utilities Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing filing has been served by Electronic Mail this 25th day of August, 2022, upon the following:

Richard Gentry
P. Christensen
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Gentry.Richard@leg.state.fl.us
Christensen.patty@leg.state.fl.us

Jennifer Crawford
Ryan Sandy
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
jcrawfor@psc.state.fl.us
rsandy@psc.state.fl.us

Mike Cassel
Florida Public Utilities Company
208 Wildlight Ave.
Yulee, FL 32097
mcassel@fpuc.com



Gregory M. Munson, Esquire
Florida Bar No. 188344
Gunster Law Firm
215 South Monroe Street
Suite 601
Tallahassee, FL 32301

Attorneys for Florida Public Utilities Company