

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of PALM COAST)	DOCKET NO. 890277-WS
UTILITY CORPORATION for increased)	ORDER NO. 22117
rates in Flagler County)	ISSUED: 10-31-89
_____)	

ORDER GRANTING MOTION TO WAIVE THIRTY-
INTERROGATORY LIMIT, GRANTING MOTION TO COMPEL
AND DENYING MOTION FOR PROTECTIVE ORDER,
MOTION TO STRIKE AND REQUEST FOR ORAL ARGUMENT

CASE BACKGROUND

By Order No. 18785, issued February 2, 1988, this Commission initiated an investigation into the level of Palm Coast Utility Corporation's (PCUC's) investment in utility plant assets. Docket No. 871395-WS was opened in order to process the investigation. By Order No. 18713, issued January 21, 1988, this Commission acknowledged the Office of Public Counsel's (OPC's) intervention in the investigation docket.

On May 19, 1989, PCUC completed the minimum filing requirements for a general rate increase and that date was established as the official filing date. Docket No. 890277-WS was opened in order to process PCUC's rate application. By Order No. 21666, issued August 2, 1989, this Commission acknowledged OPC's intervention in the rate case docket.

By Order No. 21794, issued August 28, 1989, the Commission subsumed Docket No. 871395-WS, the investigation docket, into Docket No. 890277-WS, the rate case docket.

On July 21, 1989, OPC served its first set of interrogatories and first request for production of documents upon PCUC. On July 27, 1989, OPC served a second set of interrogatories and second request for production of documents upon PCUC. Also on July 27, 1989, the Staff of this Commission (Staff) served its first set of interrogatories and first request for production.

On July 31, 1989, PCUC filed objections to and requests for clarification of OPC's first set of interrogatories and first request for production. On August 7, 1989, PCUC filed objections to and requests for clarification of Staff's first

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set of interrogatories and first request for production, and OPC's second set of interrogatories and second request for production. Among its other objections, PCUC objected to answering any interrogatories in excess of thirty. Pursuant to Rule 1.340, Florida Rules of Civil Procedure, the number of interrogatories which may be served without leave of the presiding officer is limited to thirty.

On August 14, 1989, OPC filed a motion to increase the number of interrogatories. OPC requested that the number of allowed interrogatories be increased from thirty to forty-four, plus twelve subparts. OPC considered any interrogatory with only one subpart as a single question.

On August 30, 1989, OPC served a third set of interrogatories and a third request for production upon PCUC, along with a motion to increase the number of interrogatories. OPC requested that the number of interrogatories allowed be increased from thirty to fifty-seven, plus fourteen additional subparts. As before, OPC counted each interrogatory with only one subpart as one question.

On September 11, 1989, PCUC filed objections to OPC's third set of interrogatories and a motion for extension of time. In its motion, PCUC requested that, if the Commission granted OPC's motion to increase the number of interrogatories, PCUC be given an extension of time within which to answer such interrogatories.

On September 12, 1989, Staff filed a motion to waive the thirty-interrogatory limit.

On September 18, 1989, OPC filed a motion to compel PCUC to respond to its discovery requests.

By Order No. 21927, issued September 20, 1989, the Prehearing Officer granted OPC's motion to increase the number of interrogatories and PCUC's motion for extension of time.

On September 25, 1989, PCUC filed a response to Staff's motion to waive the thirty-interrogatory limit, a response to OPC's motion to compel discovery, a motion to strike certain portions of OPC's motion to compel discovery, a motion for a protective order and a request for oral argument on the various motions and responses thereto. Each of the various motions and responses are discussed below.

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PCUC'S REQUEST FOR ORAL ARGUMENT

Upon review, it does not seem that oral argument will enhance the Prehearing Officer's understanding of these matters, as each of the motions and responses speak for themselves. Accordingly, PCUC's request for oral argument is hereby denied.

STAFF'S MOTION TO WAIVE THIRTY-INTERROGATORY LIMIT

In its motion, Staff argues that utility regulation in general, and applications for increased rates in particular, are highly complex and technical matters, which typically require an abundance of information to process. Staff argues further that, if it is not granted leave to exceed the thirty-interrogatory limit, it will be unable to adequately prepare for the hearing scheduled on this matter or process PCUC's application for increased rates.

In its response to Staff's motion, PCUC argues that a waiver of the thirty-interrogatory limit would give Staff carte blanche to propound "an infinite number" of interrogatories. PCUC contends that the provision of Rule 1.340, Florida Rules of Civil Procedure, which allows for "a larger number [of interrogatories than thirty] on motion and notice and for good cause" does not contemplate an "infinite number" of interrogatories and that "notice" should include a requirement to attach the excess interrogatories requested. PCUC also argues that, although Rule 1.340, Florida Rules of Civil Procedure, was amended in 1988, it was amended to enlarge the number of interrogatories that may be propounded without leave of the presiding officer. Finally, PCUC argues that Staff's motion is deficient because it does not provide good cause for exceeding the thirty-interrogatory limit.

Regarding PCUC's argument that a waiver of the thirty-interrogatory limit would give Staff carte blanche, the Prehearing Officer notes that interrogatories are always subject to valid objections. As for PCUC's argument that "notice" requires service of the excess interrogatories proposed, it should be noted that, in its objections to OPC's third set of interrogatories, PCUC complained that OPC served its proposed excess interrogatories with its motions to increase the number of interrogatories, prior to obtaining

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Commission approval to exceed the thirty-interrogatory limit. In addition, while the maximum number of interrogatories was increased by the 1988 amendment, Rule 1.340, Florida Rules of Civil Procedure, was also amended to delete the reference to "initial" interrogatories. Further, it should be noted that Rule 25-22.034, Florida Administrative Code, by which this Commission adopted the discovery provisions of Rules 1.280 through 1.400, Florida Rules of Civil Procedure, was adopted long before there was any numerical limit on interrogatories.

Rate cases typically involve a large number of highly technical issues. In order to develop any single issue, it is conceivable that Staff would need to propound a number of interrogatories. If limited to thirty interrogatories, Staff would have to choose which issues to pursue, which would frustrate its ability to process rate applications, to develop a record and, ultimately, to advise this Commission.

Based upon the discussion above, Staff's motion to waive the thirty-interrogatory limit is hereby granted.

OPC'S MOTION TO COMPEL AND
PCUC'S MEMORANDUM IN OPPOSITION

In its motion to compel discovery, OPC agrees with Staff that it would be impossible for it to adequately prepare for this case subject to a thirty-interrogatory limit. OPC also suggests that PCUC's responses to its discovery requests are both dilatory and obstructionist. OPC then lists a number of specific discovery requests which "PCUC either refuses to answer or avoids with a nonresponsive answer" and requests that PCUC be compelled to provide adequate responses. Each of these specific items are discussed, along with PCUC's responses, below.

OPC's First Set of Interrogatories

Interrogatories Nos. 1b and e

1. List all employees as of December 31, 1988. For each employee list in addition to his/her name:

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- b. Test year wages capitalized or charged to other than an expense category.
- e. Test year fringe benefits (of all employees) by class and costs of each.

In its initial objections, PCUC argued that these interrogatories are oppressive and that providing responses would create undue burden or expense.

In its motion to compel, OPC contends that the information requested in Interrogatory No. 1b is necessary in order to determine the appropriateness of PCUC's decision whether to expense or capitalize such wages. Regarding Interrogatory No. 1e, OPC argues that the appropriateness of compensation paid to employees is always an issue in a rate case. Finally, OPC disagrees with PCUC's assertion that these requests would create undue burden or expense. OPC maintains that PCUC should be able to readily determine the amounts of test year wages which were capitalized and what fringe benefits were paid.

In its response, PCUC argues that these interrogatories are oppressive and that compliance will cause it undue burden. According to PCUC, it does not have the information in the forms requested. Further, PCUC argues that the relevant information is either contained in the MFRs or in answers to interrogatories already responded to. Finally, as regards fringe benefits, PCUC argues that providing this information would not lead to any relevant information.

As stated by OPC, the appropriateness of wages and benefits paid to employees is always at issue in a rate case. Further, the appropriateness of PCUC's decision whether to capitalize or expense wages or salaries is certainly a valid issue in a rate case as controversial as this. Accordingly, OPC's motion to compel responses to these discovery requests is hereby granted.

Interrogatory No. 6

- 6. List all costs which the Company incurs in the installation of a typical PEP system. Identify each item, fully describe and list the associated cost.

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In its initial objections, PCUC argued that this interrogatory is vague and, therefore, requested clarification as to the term "typical" and the time period directed.

In its motion to compel, OPC maintains that, notwithstanding PCUC's original request for clarification, OPC and PCUC had come to a verbal agreement regarding this interrogatory at a preliminary prehearing conference held on August 11, 1989. OPC suggests, therefore, that PCUC's reaffirmation of its objection is not made in good faith.

In its response to the motion to compel, PCUC continues to argue that the description "typical PEP system" is vague and that PCUC is, therefore, unable to furnish this information. In addition, PCUC argues that it is impossible to identify the "associated cost" of the components of a PEP system because such components are placed into inventory after purchase and the costs for all purchases of similar components are averaged. Finally, PCUC argues that OPC has mischaracterized the agreement reached at the preliminary prehearing conference regarding this interrogatory. PCUC argues that OPC had, in fact, agreed to have its accounting consultant contact PCUC to clarify what information was requested.

The Prehearing Officer believes that it is clear what information OPC is attempting to elicit. Therefore, OPC's motion to compel a response to Interrogatory No. 6 is hereby granted. PCUC shall furnish the requested information based upon the average costs for the installation of PEP systems installed during the test year.

Interrogatories Nos. 9, 10, and 11

9. List all current assets and current liabilities in sub account detail by month for the period December 31, 1987 through December 31, 1988.
10. Identify each asset in the preceding question which earns a return or is related to non utility functions.
11. Identify each liability in the second preceding question which requires a return or is related to a non utility function.

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In its objections, PCUC argues that since, by Order No. 21202, issued May 8, 1989, the Commission approved the use of the formula rather than the balance sheet method to calculate working capital, these interrogatories are unduly burdensome unless the Commission allows the costs of preparing such information in rate case expense.

OPC contends that the financial statements of a business are all interrelated and that studying these interrelationships can be an important analytical tool in ratemaking. OPC further states that income, rate base and capital structure cannot be verified in isolation or to the exclusion of other balance sheet accounts. Accordingly, OPC requests that PCUC be compelled to furnish this information.

In its response to the motion to compel, PCUC quotes the following passage from Order No. 21202:

In addition, if the formula approach is not appropriate for a utility, that utility will bear the burden, and the cost of that burden, to prove the balance sheet approach.

PCUC argues that if it is not allowed to recover the costs of responding to the interrogatories, providing responses would be extremely burdensome.

Even assuming that PCUC's interpretation of Order No. 21202 is accurate, this is the kind of information that a utility of PCUC's size should have readily available. Therefore, the Prehearing Officer does not believe that it can accurately be stated that producing such information would be unduly burdensome. OPC's motion to compel a response to this discovery request is, therefore, granted.

Interrogatory No. 13

13. State the amount of capacity fee paid in connection with the provision of service for each separate project east of the Intercoastal Waterway. List each project and the related capacity fee.

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In its initial objections and requests for clarification of OPC's first set of interrogatories, PCUC made no mention of Interrogatory No. 13. Apparently, however, PCUC subsequently adopted the position that this discovery request is objectionably vague.

In its motion to compel, OPC contends that PCUC knows precisely what is being requested: what capacity and/or main extension fees have been collected from ITT-related development companies. OPC suggests that PCUC's after-the-fact objection is not offered in good faith. OPC believes that PCUC should be compelled to provide this information.

In its response, PCUC argues that it is not clairvoyant. Presumably, PCUC continues to object that this interrogatory is vague. However, since OPC has clarified its request, as described above, OPC's motion to compel a response to Interrogatory No. 13 is hereby granted.

Interrogatories Nos. 14 and 15

14. Refer to the Company Schedule E-11. State the basis for the present water system capacity charge, tap fee and meter installation charge and the wastewater capacity charge.
15. Show all calculations to support keeping all fees as shown on Schedule E-11 at present levels.

Initially, PCUC objected to these interrogatories because it had not requested any change in service availability charges. PCUC, therefore, argued that the requested information is not relevant to this case.

OPC argues that the level of these charges may well be at issue and that the only way to determine whether they are at issue is to examine PCUC's justification for such charges.

PCUC did not address these interrogatories in its response to OPC's motion to compel. Accordingly, and since service availability charges are generally at issue in any rate case, OPC's motion to compel responses to Interrogatories Nos. 14 and 15 is hereby granted.

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Interrogatory No. 22

22. State the amount of funds collected from lot owners, where water and sewer connections have not as yet been made, that relate to plant, mains, collection system, including PEP, etc., where the Company has not yet made the investment in the physical plant.

In its initial objections to OPC's first set of interrogatories, PCUC argued that this discovery request is irrelevant, oppressive, unduly burdensome, and that PCUC did not have possession, custody or control of the information.

In its motion to compel, OPC maintains that the requested information is necessary in order to evaluate the approximately fifty-five million dollars of contributions-in-aid-of-construction (CIAC) collected. OPC, therefore, contends that PCUC should be compelled to respond to this discovery request.

In its response to OPC's motion, PCUC states that, if OPC indicates the dates of interest, PCUC will respond to the interrogatory. OPC shall, therefore, inform PCUC of the dates of interest and PCUC shall supply the information.

Interrogatory No. 24

24. State the total dollar amount of water and sewer connection fees (do not include tap fees and meter installation fees) that would be collected if all unoccupied lots were required to pay the current water and sewer connection fees of \$776.00 and \$1,466.00 respectively.
- a. Of the total amount to be collected, state the amount which has been collected and is included in CIAC or CIAC in trust.

Initially, PCUC argued that the requested information is not relevant to this proceeding or reasonably calculated to lead to the discovery of admissible evidence.

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In its motion to compel, OPC contends that the information is "central to issues in the investigation docket" and relevant, in any event, to the issue of PCUC's true capital structure.

In its response to the motion to compel, PCUC continues to argue that these interrogatories are irrelevant because it has filed its rate case based upon an historic test year. In addition, PCUC argues that Interrogatory No. 24a does not make grammatical sense and that the answer to the question, as presented, would appear to be zero.

The Prehearing Officer agrees with OPC that these discovery requests are relevant to issues from the investigation docket and that they are, therefore, germane to this proceeding. As for PCUC's objection on grammatical grounds, while the question may be somewhat inartfully worded, it seems clear what information OPC intended to elicit; the total amount of CIAC collected for unoccupied lots which is included in CIAC or held as CIAC in trust.

Based upon the discussion above, the Prehearing Officer finds it appropriate to grant OPC's motion to compel answers to these interrogatories.

Interrogatories Nos. 25 and 31a and b

25. Is it the Company's position that the interest (AFUDC) capitalized on the books in 1978 and 1979 has a zero tax basis because the amounts were deducted for tax purposes in 1978 and 1979.
31. State the disposition of the contractor retention amounts due Lowery Brothers, Inc. and Halifax Paving, Inc. when the Company ceased doing business with these firms in 1974-1975.
 - a. Did ICDC give the proper credit to PCUC for these funds which were not paid to the contractors?
 - b. State the disposition of the liability for contractor retentions which was not paid.

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Initially, PCUC argued that these interrogatories are irrelevant because they are not pertinent to this proceeding but to the investigation docket.

In its motion to compel, OPC contends that PCUC's objections were rendered moot when the investigation docket was subsumed into this proceeding.

PCUC did not respond to these portions of OPC's motion to compel. Accordingly, and since these discovery requests are relevant to issues from the investigation docket, OPC's motion to compel responses to Interrogatories Nos. 25, 31 and 31a and b is hereby granted.

OPC's First Request for Production

Request for Production No. 1

1. Provide a complete listing by lot, address, or other identifiable breakdown of total CIAC as of December 31, 1988.

The CIAC amounts should be broken down between water and sewer, and the various types of charges such as meter installation fees, tap fees, capacity charges, etc.

- a. Provide a comparable listing for CIAC in trust.
- b. Provide a comparable listing for contributed taxes.
- c. Provide a comparable listing for advances for construction.

In its initial objections, PCUC argued that it does not have possession, custody or control of the requested information. PCUC further argued that the requested information is irrelevant to this proceeding because it is related to non-used and useful CIAC.

OPC's motion takes issue with both of PCUC's objections. OPC argues that the complex interrelationships between the various ITT affiliates and the appropriate treatment for the

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approximately fifty-five million dollars of CIAC collected can never be understood until this information has been brought to light.

In its response, PCUC continues to argue that the information, insofar as it is related to non-used and useful CIAC, is irrelevant to this proceeding. PCUC also argues that it has provided some of the requested information as related to active connections.

The Prehearing Officer notes that this case is highly complex and controversial, and it appears that these discovery requests are related to what was probably the single most controversial issue in the investigation docket. Accordingly, OPC's motion to compel responses to these interrogatories is hereby granted.

Request for Production No. 2

2. Provide a complete listing of all plant assets (continuing property records) by asset and account number as of December 31, 1988.

In its intitial objections, PCUC argued that it should not have to produce the document because it is over 600 pages long and because OPC has already had an opportunity to examine it. In addition, because of the size of the document, PCUC objects to having to produce it at OPC's offices.

OPC contends that the document, a computer printout, is an important tool which is necessary in order to analyze and determine the legitimacy of certain rate base items. OPC also asserts that it would not be oppressive, unduly burdensome or expensive for PCUC to produce this document.

In its response PCUC argues that, insofar as it has already provided OPC with an opportunity to examine the document, it appears that it is being harassed.

Since, from the discussion above, it seems that this document already exists as a computer printout, it does not appear that requiring PCUC to produce it would be unduly burdensome. Further, even though the document may be over 600

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pages long, it would create much less of a burden to require PCUC to produce the document at OPC's offices than to require OPC to travel to PCUC's offices to examine it. Accordingly, OPC's motion to compel a response to this discovery request is hereby granted.

Request for Production No. 3

3. Provide a copy of the tax workpapers used or submitted for consolidation purposes for 1987 and 1988. (It is our understanding that the tax workpapers for 1988 are still preliminary as the consolidated tax return will not be filed until September 15, 1989).

Initially, PCUC argued that it should not have to provide this information for 1988 because ITT's consolidated federal income tax return had not been filed. PCUC argued that the workpapers were, therefore, protected by the accountant-client privilege.

OPC maintains that the workpapers have been completed and that they should, therefore, be produced.

PCUC's response is that the papers are finalized and will be provided to OPC. However, to the extent that such workpapers have not already been produced, OPC's motion to compel a response to this discovery request is granted.

Request for Production No. 5

5. Provide copies of all invoices which would represent all charges incurred in the installation of a typical PEP System

Originally, PCUC argued that it could not supply such information because it did not understand what constituted a "typical" PEP system. In addition, PCUC argued that, due to its averaging of PEP system parts in inventory, it could not identify such documents.

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In its motion to compel, OPC incorporates by reference its arguments regarding Interrogatory No. 6. OPC maintains that PCUC should be compelled to produce such documents.

PCUC continues to argue that the word "typical" requires more explanation. It further argues that it is impossible to provide copies of invoices regarding a typical PEP system because none exist.

The Prehearing Officer rejects PCUC's arguments. Surely there are costs involved in the installation of a PEP system, such as for system components, labor or other materials or services. PCUC should be able to identify representative invoices for such costs and provide these to OPC. Accordingly, OPC's motion to compel a response to this discovery request is hereby granted.

Requests for Production Nos. 7, 11, 14 and 15

7. Provide a copy of all studies or analyses where the present water system capacity charge, tap fee and meter installation and wastewater system capacity charge were calculated as shown on Schedule E-11.
11. Provide copies of all tax workpapers or other documentation to support the Company position that the interest (AFUDC) capitalized by PCUC in 1978 and 1979 was deducted for tax purposes.
14. Provide a copy of all appraisals which the Company relied upon in establishing the value of land purchased from ICDC.
15. Provide a copy of all materials supporting AFUDC which was to be sent to Public Counsel no later than June 9, 1989 per a letter dated May 26, 1989 from Robert Kelly.

PCUC originally objected to Requests for Production Nos. 7, 11, 14 and 15. Subsequent to OPC's motion to compel responses to these discovery requests, however, PCUC did not renew its objections. Further, it appears that these discovery requests are related either to PCUC's rate application or the

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investigation docket. Accordingly, OPC's motion to compel responses to these discovery requests is hereby granted.

OPC's Second Set of Interrogatories

Interrogatories Nos. 35 - 44

Initially, PCUC, objected to answering any interrogatories in excess of thirty.

In its motion to compel, OPC argued that it would be unable to adequately prepare for this case subject to a thirty-interrogatory limit. It should be noted, however, that OPC's motion to increase the number of interrogatories has already been granted as reflected by Order No. 21927. Accordingly, the Prehearing Officer declines to rule on this portion of OPC's motion to compel since it is moot.

Interrogatory No. 35

35. Referring to MFR Sch. A-4: please provide a detailed explanation of the plant in service additions for 1987 and 1988. The explanation should include a discussion as to where the T & D and Collection system additions are and whether the plant additions are replacement plant, maintenance/repair or servicing an area which did not previously have lines installed.

PCUC originally objected to this interrogatory because to answer it would be oppressive and unduly burdensome. PCUC argued that the interrogatory would require it to pinpoint every piece of over \$3.5 million in property installed during the time period. In addition, PCUC argued that the interrogatory is vague and requested clarification.

In its motion to compel, OPC stated that it merely wishes "PCUC to identify which plant in service additions for 1987 and 1988 represent replacement or repair of existing lines and which represent the installation of new lines." OPC maintains that this information is important in order to determine what repairs associated with defective plant installed between 1970 and 1975 have been capitalized.

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PCUC, in its response, continues to argue that the interrogatory is vague. It further argues that its position is bolstered by the fact that OPC did, indeed, clarify its request in its motion to compel. PCUC argues that the appropriate remedy would be for OPC to serve an interrogatory which is designed to elicit the desired information.

Upon consideration, it appears that PCUC's only continuing objection goes to the vagueness of OPC's request rather than to anything substantive. Since OPC has already clarified its request, it would seem rather formalistic and counterproductive to require OPC to fashion a "new" interrogatory. Accordingly, the Prehearing Officer believes that OPC's motion to compel a response to Interrogatory No. 35 should be granted.

Interrogatory No. 39

39. Referring to Sch. B-2: the Non-U&U Adjustments column shows a net increase in used and useful (recoverable) sewer depreciation expense; please explain why this occurs.

PCUC objects to this interrogatory as being vague. PCUC argues that the interrogatory must be based upon a misunderstanding because it believes that the data support a decrease rather than an increase in the expense.

In its motion to compel, OPC states that the "interrogatory requests an explanation of the fact that in the column headed "Non-U & U" Adjustments, the net of the adjustments to Depreciation and Amortization-CIAC net to an increase in recoverable depreciation expense (i.e., a decrease in depreciation of \$649,308 coupled with a decrease of \$761,496 in the offsetting amortization of CIAC results in a net increase in recoverable depreciation expense of \$112,188)."

In its response, PCUC argues that OPC's motion confirms that the interrogatory is vague and that OPC should submit an appropriate interrogatory.

As above, the Prehearing Officer does not believe that it would be productive to require OPC to go through the formality of preparing a new interrogatory. Since it has already clarified its request, OPC's motion is hereby granted.

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However, to the extent that the above explanation of the interrogatory is insufficient, PCUC should contact OPC for further clarification.

OPC's Second Requests for Production

Request for Production No. 17

17. Please provide copies of the detailed balance sheets for each of the months December 31, 1987 through December 31, 1988 and for each of the months January through June, 1989, as available. The balance sheets should show as much detail as is available and should tie to the plant in service and other monthly detail shown in the MFRs.

Initially, PCUC argued that this request for production was unduly burdensome. It also argued that a request for production should not be used as a vehicle to require preparation of a document. Finally, PCUC argued that, insofar as the request was for balance sheets for periods outside of the test year, it was irrelevant to the proceeding at hand.

OPC again argues that the balance sheets of a company are all interrelated and that the rate base, income or capital structure of the utility cannot be verified in isolation. In addition, OPC maintains that looking outside of the test year can be an important check for test year accounts.

In its response, PCUC again argued that the information is irrelevant, as being outside of the test year.

Upon consideration, it does not appear that it would be unduly burdensome for PCUC to produce this material, at least to the extent that it already exists. Further, it cannot seriously be argued that such information is irrelevant. PCUC's motion to compel production is, therefore, granted.

Request for Production No. 18

18. Please provide copies of the monthly or quarterly income statements for year to date 1989.

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PCUC originally argued that this information is irrelevant because it is outside of the test year.

In its motion, OPC points out that learning how current rates are performing subsequent to a highly adjusted test year is abundantly relevant to a rate proceeding and that post-test year information is a good check on test year normality.

PCUC continues to argue that the information sought is irrelevant, as being outside the test year.

Simply because information may be outside of a test year does not mean that it is irrelevant. The information sought here appears to be related to valid issues in this case. OPC's motion to compel production of these materials is, therefore, granted.

OPC's Third Set of Interrogatories
and Third Request for Production

In its motion to compel, OPC argues that PCUC should be compelled to provide responses to OPC's interrogatories in excess of thirty. OPC also contended that, since PCUC failed to file timely objections to its third requests for production, it should be compelled to produce the requested information.

In its response, PCUC argues that, since the time for serving responses to OPC's third requests for production had not run, OPC's motion to compel is premature. PCUC did not address OPC's third set of interrogatories.

Since OPC's motion to increase the number of interrogatories has already been granted, as reflected by Order No. 21927, the Prehearing Officer declines to rule on OPC's motion to compel answers to its third set of interrogatories since it is moot. In addition, since responses were not yet due, the Prehearing Officer declines to rule on OPC's motion to compel responses to its third requests for production, as being premature.

PCUC'S MOTION FOR PROTECTIVE ORDER

In its motion for protective order, PCUC argues that it "is being subjected to an incredible amount of discovery which

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it believes to be in large part unnecessary to the considered outcome of this case." PCUC goes on to list each of the discovery requests served upon it and then suggests that the Commission issue an order putting an end to any additional discovery. According to PCUC, "[t]his request is made in good faith in order to cease the oppressive, expensive discovery upon this Utility Company."

In addition, PCUC requests that an order be entered to protect it from having to produce an approximately 600 page continuing property record computer printout. According to PCUC, printing an additional copy of this document would be unduly burdensome and oppressive. In the alternative, PCUC argues that, if the Commission grants OPC's motion to compel this document, OPC should be required to pay for such production costs.

Upon consideration, the Prehearing Officer believes that PCUC's motion for a protective order should be denied in its entirety. As noted at several places in this Order, this is a highly complex and controversial case and it would be inappropriate to enter an order placing any prior limits upon discovery. As for the continuing property record printout, the Prehearing Officer does not believe that it would be unduly oppressive, burdensome or expensive for PCUC to print an additional copy. Accordingly, PCUC's motion for protective order is hereby denied.

MOTION TO STRIKE

Finally, PCUC requests that a number of statements made by OPC in its motion to compel should be struck as being prejudicial, unsupported, impertinent or scandalous. Specifically, PCUC refers to a number of statements made in the motion which appear to be somewhat argumentative and inflammatory.

Upon review, the Prehearing Officer does not believe that it is necessary to strike these statements. Although the statements were probably made in an attempt to influence the Prehearing Officer's decision on the discovery motions, they do not rise to the level of offense urged by PCUC. PCUC's motion to strike is, therefore, denied.

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Based upon the foregoing, it is

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that Staff's motion to waive the thirty-interrogatory limit is hereby granted. It is further

ORDERED that the Office of Public Counsel's motion to compel discovery is hereby granted, as set forth in the body of this Order. It is further

ORDERED that Palm Coast Utility Corporation's motion for protective order is hereby denied. It is further

ORDERED that Palm Coast Utility Corporation's motion to strike is hereby denied. It is further

ORDERED that Palm Coast Utility Corporation's request for oral argument on the various discovery motions is hereby denied.

By ORDER of Commissioner Thomas M. Beard this 31st day
of OCTOBER, 1989.


THOMAS M. BEARD, Commissioner and
Prehearing Officer

(S E A L)

RJP

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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 sewer 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.