

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for water)	DOCKET NO. 910114-WU
certificate in Brevard, Orange)	ORDER NO. 24898
and Osceola Counties by EAST)	ISSUED: 8/7/91
CENTRAL FLORIDA SERVICES, INC.)	
)	

ORDER GRANTING IN PART AND DENYING IN PART
AMENDED MOTION TO COMPEL AND
ORDER GRANTING MOTIONS FOR PROTECTIVE ORDERS

Background

On July 3, 1991, the City of Cocoa (Cocoa) filed a Motion to Compel Answers to Interrogatories. The basis for this motion was the failure of East Central Florida Services, Inc., (ECFS) to timely answer interrogatories posed by Cocoa on May 20, 1991. Cocoa received answers to interrogatories by facsimile on the date that its original motion was filed. After reviewing the responses submitted, Cocoa filed an Amended Motion To Compel Answers to Interrogatories on July 9, 1991.

On July 8, 1991, ECFS filed a motion to strike Cocoa's original motion to compel, and, on July 17, 1991, ECFS filed a response to Cocoa's amended motion. As Cocoa's original motion was amended and ECFS responded to the amended motion, I do not believe it necessary to rule on Cocoa's original motion or on ECFS' motion to strike Cocoa's original motion. Consequently, this Order addresses Cocoa's amended motion.

On June 21, 1991, ECFS filed Motions For Protective Orders as to interrogatories posed to it by the South Brevard Water Authority (SBWA) and to portions of interrogatories posed by Cocoa. No responses to these motions have been filed.

Requests for Protective Order

In its First Set of Interrogatories to ECFS, Interrogatories Nos. 1 and 3, SBWA requested information concerning the type, size, and manufacturer of some of the utility's pumps. Cocoa, in its First Set of Interrogatories to ECFS, Interrogatories Nos. 1, 2, and 4, as well as others, requested ECFS to provide the home addresses and home telephone numbers of certain persons involved with ECFS and potential witnesses.

In its Motion For A Protective Order from SBWA's discovery request, ECFS claims that the information sought by SBWA is not relevant, is not reasonably calculated to lead to the discovery of

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relevant evidence, and imposes an undue burden. In its Motion for Protective Order from the information sought by Cocoa, ECFS claims that the information sought is not relevant and is not reasonably calculated to lead to the discovery of relevant evidence.

The movant has the burden of showing that it is entitled to the relief sought. ECFS has set forth the grounds for which it asserts it is entitled to relief in its motions. Neither SBWA nor Cocoa have filed a response to ECFS' motion as required by Rule 25-22.037(2)(b), Florida Administrative Code. Since ECFS' Motions For Protective Orders are reasonable and unopposed, its Motions are hereby granted. SBWA and Cocoa shall not seek further discovery of the information sought in the aforementioned discovery requests.

Amended Motion to Compel

Although I shall rule on each point made in Cocoa's Amended Motion To Compel separately, in the interest of efficiency and brevity, I shall not recite the interrogatory posed or the response given. I note that many of Cocoa's interrogatories do not appear to have been carefully tailored so as to elicit a recitation of objective facts. At the same time, I find many of ECFS's responses to fall short of what was asked for to the extent an objective fact could have been provided.

As to Cocoa's Interrogatory No. 2, the Amended Motion is denied. The substance of the testimony given by ECFS' expert witnesses will be contained in prefiled testimony. The grounds for each of the experts' opinions can be found in that testimony and in ECFS' application. As it appears that the sum of ECFS' response states exactly this, I think that the question was answered. Without a more specific question from Cocoa, I could not rule otherwise.

As to Interrogatory No. 7, the Amended Motion is denied as to subparts a and b, but granted as to subpart c, as set forth herein. In subpart a, Cocoa requested documents used by ECFS in evaluating parts of its application, and ECFS answered that there were none. In the answer to subpart b, ECFS lists the name of persons who have knowledge of that portion of the application referenced in the body of the interrogatory. As to subparts a and b, I believe that the questions posed have been answered.

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As to subpart c, I am, as I noted above, concerned with the broad scope of the question. ECFS' response that the facts and documents relied upon are "innumerable," however, is less than completely responsive. Therefore, within ten (10) days of the date of this Order, I hereby direct ECFS to respond to this subpart by providing at least a reasonable list of what was sought by this portion of the interrogatory.

As to Interrogatory No. 8, the Amended Motion is denied in part and granted in part. I believe that the question was answered in so far as ECFS stated that it had not perused local comprehensive plans to determine support for its application but that it believed that a Public Service Commission certificate is not inconsistent with said plans. Once again, however, I take exception to the scope of the question and the response's recitation that the facts relied upon are "innumerable." Therefore, within ten (10) days of the date of this Order I hereby direct ECFS to respond to this interrogatory by providing a reasonable list of what was sought.

As to Interrogatory No. 9, the Amended Motion is granted. As to the facts sought by the interrogatory, ECFS is ordered to within ten (10) days of the date of this Order provide a reasonable list. As to the documents relied upon, ECFS mentions in its response reports of various governmental entities, but it did not specifically identify any of these reports. Therefore, within ten (10) days of the date of this Order, ECFS shall provide a reasonable list of reports.

As to Interrogatory No. 11, the Amended Motion is denied. I believe that the question was answered.

As to Interrogatory No. 12, the Amended Motion is granted. I do not believe that the response provided explains with specificity the process involved in cost projection. Although I do not believe that ECFS should be required to answer the question to the full extent of its broad scope, I think that if ECFS sought costs estimates from certain local contractors and then applied the Handy-Whitman Index to those costs, it should have stated as much. Therefore, within ten (10) days of the date of this Order, ECFS shall provide a reasonable list of the facts and sources relied upon.

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Sanctions


In its Amended Motion, Cocoa requested that the Commission award Cocoa the attorney's fees associated with its Motion. This Commission does not have any authority to award attorney's fees for discovery disputes.

It is, therefore

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the Motions for Protective Orders are hereby granted as set forth in the body of this Order. It is further

ORDERED that the Amended Motion to Compel Answers to Interrogatories Filed by the City of Cocoa is hereby granted in part and denied in part as set forth in the body of this Order.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 7th day of AUGUST, 1991.


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 120.59(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.