

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Approval) DOCKET NO. 910560-WS
of a Rate Increase in Lee County) ORDER NO. PSC-92-0182-PCO-WS
by TAMIAMI VILLAGE UTILITY, INC.) ISSUED: 4/13/92
_____)

ORDER DENYING MOTION TO COMPEL

On March 5, 1992, Tamiami Village Utility, Inc., (Tamiami or utility) served interrogatories and requests for production on the staff of this Commission (staff). On March 16, 1992, staff filed an objection to and motion to strike those discovery requests. On March 26, 1992, the utility moved for an order compelling discovery.

In its objection and motion, staff made several general objections to Tamiami's discovery requests, including the following: staff is not a party and is, therefore, not subject to discovery; staff's activities and thought processes are privileged and, therefore, not subject to discovery; the information sought is irrelevant and is not reasonably calculated to lead to the discovery of relevant information; the discovery does not comport with the purpose of discovery and is unduly burdensome; and the information sought is public record, available for inspection and copying at the Commission.

In its motion to compel, Tamiami responded with the following arguments: because staff is participating in this proceeding as a party, it is a party and is, thus, subject to discovery; this case is not a rule-making proceeding, so legislative privilege does not pertain; Tamiami's right to conduct cross-examination would be meaningless if Tamiami could not obtain discovery; and Tamiami's discovery is no more burdensome than staff's discovery.

I have reviewed Tamiami's discovery requests, staff's objection and motion, and Tamiami's motion to compel. On the whole, Tamiami's discovery appears to be designed to solicit from staff the identification, explanation, and/or production of matters contained in Chapters 350 and 367, Florida Statutes, matters contained in the Commission's rules and orders, or materials which are public record in accordance with Chapter 119, Florida Statutes.

The general purpose of discovery is to allow one participant to a proceeding to obtain information which is not otherwise available to him/her because that information, whether it be personal knowledge, documents, or things, is in the possession of another. With this purpose in mind, I do not think that discovery is the appropriate method for Tamiami to obtain any of the information it has requested, nor do I think that staff is the repository of the information sought. All or most of the

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FPC-RECORDS/REPORTS

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information sought is a matter of public record, and as staff suggested in its objection and motion, such information is available for Tamiami's inspection and copying at the Commission, Division of Records and Reporting, the Fletcher Building, 101 E. Gaines Street, Tallahassee, Florida, Monday through Friday, from 8:00 am to 4:30 pm.

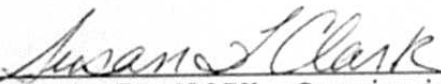
In addition, I am inclined to agree with staff that compiling much of the information requested would require research and review of the content of public records and, thus, is appropriately a responsibility which falls on the attorney for the utility. Indexes to our rules and orders are available, as is a reporting service to help the attorney in his research. To the extent the information requested is not found in our rules or orders, such information would be available through a request made pursuant to Chapter 119, Florida Statutes.

In consideration of the foregoing, I hereby deny Tamiami's motion to compel. Since Tamiami's motion to compel is denied, staff's motion to strike is moot, and I shall therefore not rule on same.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Tamiami Village Utility, Inc.'s motion to compel is hereby denied.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 13th day of APRIL, 1992.



SUSAN F. CLARK, Commissioner
and Prehearing Officer

(S E A L)

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

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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 wastewater 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.