

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for a rate) DOCKET NO. 910890-EI
increase by Florida Power) ORDER NO. PSC-92-0439-PCO-EI
Corporation.) ISSUED: 6/2/92
_____)

ORDER GRANTING MOTIONS TO COMPEL AND
DENYING DEFERRAL OF HEARING AND FILING DATES

BY THE COMMISSION:

On May 5, 1992, the Office of Public Counsel filed a Motion to Compel Discovery (with request for oral argument), asserting that Florida Power Corporation (FPC) had failed to timely respond to numerous interrogatories and requests for production of documents. Also on May 5, 1992, the Office of Public Counsel filed a second Motion to Compel Discovery (with request for oral argument), asserting that FPC provided responses to interrogatories 190, 191, 192 and 193, and POD 111, which were inadequate, incomplete, and not in good faith.

On May 7, 1992, Occidental Chemical Corporation (Occidental) filed a Motion to Compel Discovery (with request for oral argument) asserting that numerous interrogatories and requests for production had not been responded to in a timely manner by FPC. In addition the motion states that numerous of FPC's responses are deficient and incomplete.

On May 7, 1992, the Office of Public Counsel filed a third Motion to Compel (with request for oral argument), asserting that numerous additional responses to interrogatories and requests for production of documents were inadequate, incomplete, and not in good faith.

Each of the Motions to Compel filed by the Office of Public Counsel, and Occidental contains a request that the dates scheduled for the hearing and for testimony in this docket be deferred, on the ground that FPC's failure to timely respond to discovery has made it impossible to adequately prepare for the hearing and to timely prefile testimony.

On May 22, 1992, the Office of Public Counsel filed a Motion to Defer Hearing Dates and for Expedited Hearing on the Motion. The motion asserts that in the absence of timely discovery from FPC, "the Citizens are unable to adequately prepare for the hearing; unable to prepare their testimony; and unable to ascertain the extent to which their interests are affected".

COMMENTS NUMBER-DATE

05620 JUN-2 1992

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On May 20, 1992, FPC filed its Response in Opposition to Occidental's Motion To Compel Discovery.

Having given careful consideration to each of the motions and to Florida Power Corporation's response, we conclude that oral argument is not necessary for determination of this matter. We further conclude that the Motions to Compel filed by the Office of Public Counsel and Occidental shall be granted, and that requests to defer the hearing date, and the time for filing of testimony shall be denied.

Approximately 1300 interrogatories and requests for production of documents have been submitted to FPC in this rate proceeding. Over 600 of these interrogatories and requests for production were filed in a single three day period. Occidental alone has submitted over 520 separate interrogatories and requests for production (including subparts).

The Florida Rules of Civil Procedure provide generally that the number of interrogatories submitted by a party in litigation "shall not exceed 30". The complexities of a rate proceeding however require the filing of numerous interrogatories over those envisioned in Rules of Civil Procedure. The Commission staff alone has filed several hundred interrogatories in this proceeding. The Commission recognizes that such detailed and thorough discovery is necessary in order to gain an accurate financial picture of the utility seeking rate relief. The Commission also recognizes that 1300 interrogatories and requests for production can be a tremendous burden for a utility.

In the instant case it appears that Florida Power Corporation has attempted to respond in good faith to the parties' discovery requests, but has been overburdened by the deluge of requests it has received. Under these circumstances, punitive measures against FPC would not be appropriate. However, we will grant the Motions to Compel to the following extent: FPC shall provide the discovery responses it previously failed to provide, as enumerated in each of the motions, on or before Friday, June 5, 1992. With regard to those responses which the parties asserted to be inadequate or incomplete, by June 5, 1992, FPC shall supplement each response that Occidental and Public Counsel have alleged to be inadequate. If FPC believes that an original response was sufficient, it shall file with the Commission by June 5, 1992, a statement detailing the reasons it believes the original response was sufficient. Said statement shall individually address each response alleged to be inadequate, and shall set forth in detail attempts made to settle the individual disputed matters without Commission involvement.

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In order to ensure that all parties have the opportunity to address information contained in past-due discovery materials, we will permit them to file supplemental direct testimony on or before June 12, 1992. The testimony shall address only new information contained in past-due discovery responses received after May 19, 1992.


It is therefore

ORDERED that the Motions to Compel Discovery filed on May 5 and May 7, 1992 by the Office of Public Counsel, and on May 7, 1992 by Occidental Chemical Corporation, are hereby granted, and Florida Power Corporation shall hereby comply with all discovery requirements set forth in the body of this Order. It is further

ORDERED that all parties to this proceeding will be permitted to file supplemental direct testimony on or before June 12, 1992, as set forth in the body of this Order. It is further

ORDERED that all requests made by Occidental Chemical Corporation and the Office of Public Counsel in the motions dated May 5, May 7, and May 22, 1992, to defer the hearing date and time for filing testimony, are hereby denied.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 2nd day of JUNE, 1992.



BETTY EASLEY, Commissioner
and Prehearing Officer

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