

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate ) DOCKET NO. 911188-WS  
increase in Lee County by ) ORDER NO. PSC-92-0752-PCO-WS  
LEHIGH UTILITIES, INC. ) ISSUED: 8-6-92

ORDER FINDING OFFICE OF PUBLIC COUNSEL'S MOTION TO  
PERMIT ADDITIONAL INTERROGATORIES MOOT, GRANTING IN PART AND  
DENYING IN PART LEHIGH UTILITIES, INC.'S  
MOTION FOR PROTECTIVE ORDER

Motion to Permit Additional Interrogatories

On June 2, 1992, the Office of Public Counsel (OPC) filed a Motion to Permit Additional Interrogatories in Docket No. 911188-WS which requested that OPC be permitted to serve more than 30 interrogatories on Lehigh Utilities, Inc. (Lehigh). On June 5, 1992, Order No. PSC-92-0459-PCO-WS, an Order Establishing Procedure, was issued which stated that interrogatories would be limited to 100. Therefore, OPC's Motion to Permit Additional Interrogatories is moot in light of the limit set in the Order Establishing Procedure.

Motion for Protective Order

On June 2, 1992, OPC served 68 interrogatories on Lehigh. Lehigh filed a Motion for Protective Order in response on June 17, 1992. Lehigh's motion requested that Interrogatories Nos. 1 and 2 be struck and Interrogatories Nos. 14 and 29 be clarified. Public Counsel filed a response on June 23, 1992, which clarified Interrogatories Nos. 14 and 29.

On July 7, 1992, Lehigh filed an Amended Motion for Protective Order which requested that Interrogatories Nos. 1, 2, 62, 63, 64 and 68 be struck or that Lehigh be relieved of any obligation to respond to them. In addition, Lehigh requested that a protective order be issued acknowledging the proprietary and confidential nature of the information requested by OPC in Interrogatories Nos. 28 and 46.

Interrogatories Nos. 1 and 2 consist of requests for any and all communication between Lehigh and the Public Service Commission's Staff (Staff) concerning this case, including: the various filing dates discussed between Staff and Lehigh; the various rate design plans which may have been considered by the utility or Staff; whether Lehigh should have chosen the PAA

DOCUMENT NUMBER-DATE

08758 AUG -6 1992

FILE RECORDS / REPORTS

procedure; and whether any waiver of part of the minimum filing requirements was considered. In the Motion for Protective Order, Lehigh stated that the information to be derived from such a request is irrelevant or would not likely lead to the production of relevant evidence. Under the circumstances, it is appropriate to find that these questions may lead to the production of relevant evidence. Therefore, Interrogatories Nos. 1 and 2 shall be answered within five days from the date of this Order.

Interrogatories Nos. 62, 63, 64, and 68 concern the potential legal arguments surrounding whether SFAS No. 106 must be considered when revenue requirements are calculated, and whether SFAS No. 106 preempts state law. In addition, Lehigh is asked to respond to whether the Public Service Commission (Commission) would be held in violation of federal law, or if the Commission would be held accountable for said violation. Lehigh has stated that such interrogatories are seeking Lehigh's legal theories which are not discoverable under the work product privilege, Rule 1.280(b)(3), Florida Rules of Civil Procedure. OPC is requesting legal theories and legal opinions regarding the application of federal and state law to this case. Such legal opinions are not appropriate for discovery. Therefore, based on the information above, Lehigh shall not be required to answer Interrogatories Nos. 62, 63, 64, and 68.

Interrogatories Nos. 28 and 46 request the position, salary, and duties of each employee, and the name, title, and salary of management employees (including those employed by subsidiaries or affiliates) who work in public relations on behalf of Lehigh. Lehigh states that such information is confidential and is proprietary in nature pursuant to Section 367.156(3), Florida Statutes. We find the determination by Lehigh, that the requested information is confidential to be an insufficient basis for not answering Interrogatories Nos. 28 and 46. Therefore, we find it appropriate to require Lehigh to answer Interrogatories Nos. 28 and 46 within five days from the date of this Order. If the utility wishes a Commission determination on the confidentiality of its response to Interrogatories Nos. 28 and 46, it should request confidential treatment pursuant to Section 367.156, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

Based upon the foregoing, it is, therefore,

ORDER NO. PSC-92-0752-PCO-WS  
DOCKET NO. 911188-WS  
PAGE 3

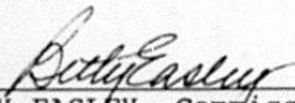
ORDERED by Commissioner Betty Easley, as Prehearing Officer, that Lehigh Utilities, Inc.'s Motion for Protective Order is hereby granted in part and denied in Part. It is further

ORDERED that Lehigh Utilities, Inc. shall answer Interrogatories Nos. 1, 2, 28, and 46, within five days from the date of this Order. It is further

ORDERED that Interrogatories Nos. 62, 63, 64, and 68, served by the Office of Public Counsel are hereby struck. It is further

ORDERED that the Motion for Permitting Additional Interrogatories, as filed by Office of Public Counsel, is moot.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 6th day of August, 1992.

  
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BETTY EASLEY, Commissioner  
and Prehearing Officer

( S E A L )

BE/CB/LK

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),

ORDER NO. PSC-92-0752-PCO-WS  
DOCKET NO. 911188-WS  
PAGE 4

Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, is 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.