BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate increase in Brevard, Charlotte, Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by SOUTHERN STATES UTILITIES, INC.; Collier County by MARCO SHORES UTILITIES (Deltona); Hernando County by SPRING HILL UTILITIES (Deltona); and Volusia County by DELTONA LAKES UTILITIES (Deltona)	DOCKET NO. 920199-WS ORDER NO. PSC-92-0881-PCO-WS ISSUED: 08/27/92

ORDER GRANTING IN PART AND DENYING IN PART OPC'S PETITION FOR RECONSIDERATION OF ORDER NO. PSC-92-0638-PCO-WS

Order No. PSC-92-0638-PCO-WS, issued July 10, 1992, is the Order Establishing Procedure in this docket. On July 20, 1992, the Office of Public Counsel (OPC) filed a Petition for Reconsideration of that Order. On July 28, 1992, Southern States Utilities, Inc., and Deltona Utilities, Inc., (collectively referred to as "the utility") filed a response to OPC's petition. In its petition, OPC argues that the Order Establishing Procedure fails to state all of the terms of the June 25, 1992, agreement entered into by the utility and OPC and that the Order errs in stating that OPC's June 2, 1992, Motion to Permit Additional Interrogatories was moot. OPC's petition is hereby granted in part and denied in part as set forth below.

The Order Establishing Procedure notes that on June 2, 1992, OPC filed a Motion to Permit Additional Interrogatories and that on June 10, 1992, the utility filed a Motion For Protective Order Striking Citizens' First, Second and Third Sets of Interrogatories and First and Second Requests For Production of Documents. In its motion, OPC sought approval to serve more interrogatories than the 30 allowed by Fla. R. Civ. P. 1.340. In its motion, the utility sought to have all of OPC's discovery requests stricken as premature. OPC and the utility filed timely responses to each other's motions.

The Order Establishing Procedure goes on to describe an agreement reached by OPC and the utility at a June 25, 1992, meeting with the Commission staff: The utility agreed to file all clarification requests and substantive objections to OPC's

outstanding discovery by July 1, 1992; the utility agreed to submit responses for the balance of OPC's discovery by August 7, 1992, if OPC withdrew its discovery requests seeking projected data and pre-1989 data, and by August 12, 1992, if OPC did not so withdraw; and counsel for OPC agreed not to file a motion to compel responses to its discovery if the utility abided by this schedule.

In consideration of the agreement reached, I found that OPC's Motion to Permit Additional Interrogatories and the utility's Motion for Protective Order were moot. In addition, I limited discovery to 1,000 interrogatories and 500 requests for production of documents, but allowed for more discovery upon a party's showing good cause.

In its Petition for Reconsideration, OPC states that the Order Establishing Procedure fails to mention that at the June 25 meeting, the utility agreed to respond to the OPC's first set of interrogatories and first set of request for production of documents by July 22, 1992. Having reviewed OPC's Petition for Reconsideration and conferring with staff as to the substance of the June 25 agreement, I acknowledge that the Order Establishing Procedure failed to incorporate this provision of the June 25 agreement although it should have done so.

In its Petition for Reconsideration, OPC argues that its June 2 Motion to Permit Additional Interrogatories was not mooted by the parties' June 25 agreement. OPC asserts that its motion was not discussed in the context of the agreement and that the parties treated the question of a discovery cap as a pending matter even after the June 25 agreement. In addition, OPC argues that the number of interrogatories and requests for production of documents allowed in the Order Establishing Procedure is far fewer than OPC would have been permitted had the utility filed separate rate cases for its systems. "If allowed to stand," OPC states, "the order deprives the Citizens of the opportunity for complete discovery which due process requires." OPC requests that thirty interrogatories per system be allowed.

In its response, the utility maintains that the Order Establishing Procedure correctly determined that as a result of the June 25 meeting, OPC's Motion to Permit Additional Interrogatories was rendered moot. The utility argues that OPC's request for 30 interrogatories per system is not appropriate because the utility is not required by either Chapter 367 or the Commission's rules to file a separate rate application for each of its systems and because accepting OPC's rationale would be akin to interpreting Fla. R. Civ. P. Rule 1.340(a) so as to allow 30 interrogatories for

each count of a civil complaint.

I do not believe error was committed in finding OPC's Motion to Permit Additional Interrogatories moot. In that motion, OPC requested that it be allowed to serve more than thirty interrogatories; it did not suggest, nor even mention, an appropriate numerical limitation on discovery. The parties' continuing exchange of views on discovery limitations is irrelevant. By the utility's agreeing to answer more than 30 interrogatories and by the Order Establishing Procedure's allowing up to 1,000 interrogatories, OPC's motion was clearly moot.

In addition, I am not persuaded that error was committed in establishing a discovery limitation lower than that suggested by OPC. The Prehearing Officer has the discretion to establish numerical limitations on discovery as he or she deems fit. OPC's argument that the parties would be allowed more discovery if the utility had filed separate rate cases for the systems included in this case does not lead me to believe that I have abused that discretion. After taking into consideration factors such as the complexity of the case, the number of systems involved, the amount of the rate increase requested, I established numerical limitations which I considered fair and reasonable. OPC has not persuaded me to think differently. Furthermore, I note that pursuant to the Order Establishing Procedure, the Prehearing Officer may allow more discovery upon a showing of good cause.

Based on the foregoing, it is therefore

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that the Office Of Public Counsel's Petition for Reconsideration of Order No. 92-0638-PCO-WS is hereby granted in part and denied in part as set forth in the body of this Order.

By Order of Commissioner Betty Easley, as Prehearing Officer, this 27th day of August, 1992.

Betty Easley

BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)
MJF/LAJ

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 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. 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.