

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate) DOCKET NO. 920655-WS
increase in Collier County by) ORDER NO. PSC-92-1316-PCO-WS
Marco Island Utilities) ISSUED: 11/13/92
(Deltona))
_____)

ORDER GRANTING PUBLIC COUNSEL'S SECOND MOTION
TO PERMIT ADDITIONAL INTERROGATORIES AND
DENYING SOUTHERN STATES' MOTION FOR PROTECTIVE ORDER

On September 30, 1992, Order No. PSC-92-1080-PCO-WS, an Order Establishing Procedure, was issued in the above-referenced docket. Pursuant to the Order Establishing Procedure, discovery was limited to 150 interrogatories, including subparts. However, by Order No. PSC-92-1177-PCO-WS, issued October 19, 1992, the Prehearing Officer granted the Office of Public Counsel's (OPC) first Motion to Permit Additional Interrogatories and revised the Order Establishing Procedure. The revised order expanded the discovery amount to 200 interrogatories, including subparts and allowed OPC to submit its entire first set of interrogatories, which consisted of a total of 180 interrogatories.

On October 16, 1992, OPC filed a second Motion to Permit Additional Interrogatories. On the same date, OPC served its Second Set of Interrogatories and Second Request for Production of Documents on Southern States Utilities, Inc. (Southern States or utility). OPC's second set of interrogatories contains 35 additional interrogatories, including subparts. The number of interrogatories now served on the utility by OPC is 215.

OPC has exceeded the interrogatory limit set by the Prehearing Officer. OPC maintains that there is good cause for exceeding the discovery limit. First, OPC asserts that the dollar amount of Southern States' requested revenue increase is very large. Second, OPC asserts that this case is made more complex because it is based on the use of a projected test year.

On October 20, 1992, Southern States filed a Response to Public Counsel's Second Motion to Permit Additional Interrogatories. In its motion, the utility asserts that Public Counsel's Motion is premature and without authority. The utility states OPC submitted its Second Set of Interrogatories before Order No. PSC-92-1177-PCO-WS was issued.

On October 22, 1992, Southern States submitted a Motion for Protective Order, or alternatively, Motion to Strike Portion of Public Counsel's Second Set of Interrogatories. In the utility's

DOCUMENT NUMBER-DATE

13351 NOV 13 1992

FPSC-RECORDS/REPORTING

Motion for Protective Order, Southern States requests the Prehearing Officer to enter an Order which provides that Southern States is required to respond to only 20 of the 35 interrogatories, contained in OPC's Second Set of Interrogatories. The utility further requests that the Prehearing Officer strike the remaining interrogatories contained in OPC's Second Set of Interrogatories. In support of its motion, Southern States asserts that compliance with the Prehearing Officer's orders will provide OPC with responses to significantly more than 200 questions since each interrogatory contains multiple questions.

On October 29, 1992, OPC filed a Response to Southern States' Motion for Protective Order, whereby OPC requests the Commission to deny the utility's request for a protective order and to permit additional interrogatories so long as the interrogatories solicit information relevant to this case. In this response, OPC maintains that:

The burden is upon the utility to justify its requested increase. If the utility succeeds in frustrating the customer's prehearing discovery of basic information, the Citizens are left with little choice but to seek the needed information through the more costly means of depositions and final hearings, which are needlessly extended to accomplish discovery which should have been granted before the hearing.

As stated in Order No. PSC-92-1177-PCO-WS, it is standard Commission practice for the Prehearing Officer to limit discovery in the Order Establishing Procedure. The Commission limits discovery so that rate case expense may be kept to a reasonable level. It is important to note that the customers, who are represented in this proceeding by OPC, will be subject to bearing the costs associated with any discovery propounded by OPC. The interrogatories contained in OPC's second set appear to be reasonably related to this docket and, therefore, OPC's Second Set of Interrogatories are hereby granted.

The limit of interrogatories in this case is expanded to allow OPC's second set of interrogatories. Consequently, the limit shall be increased to 215. Continuing the rationale of Order No. PSC-92-1177-PCO-WS, OPC must show good cause for any further interrogatory requests. Service of additional interrogatories must be preceded by a filing with the Commission of a motion to permit additional

ORDER NO. PSC-92-1316-PCO-WS
DOCKET NO. 920655-WS
PAGE 3

interrogatories, accompanied by a copy of the interrogatories to be served. The utility shall not be obligated to answer the interrogatories unless and until the Prehearing Officer issues an order permitting additional interrogatories.


Based upon the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the Office of Public Counsel's Second Motion to Permit Additional Interrogatories is hereby granted. It is further

ORDERED that Southern States Utilities, Inc.'s Motion to Strike Portion of Public Counsel's Second Set of Interrogatories is hereby denied. It is further

ORDERED that the Office of Public Counsel must submit any subsequent requests to permit additional interrogatories with the Commission prior to serving the interrogatories upon the utility.

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



SUSAN F. CLARK, Commissioner
and Prehearing Officer

(S E A L)

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: (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.