

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 931122-WU
amendment of Certificate No.) ORDER NO. PSC-94-1218-CFO-WU
189-W to include facilities of) ISSUED: October 5, 1994
Lakeside Golf, Inc. and for)
limited proceedings to set rates)
in Citrus County by SOUTHERN)
STATES UTILITIES, INC.)
_____)

ORDER GRANTING SSU AND LGI'S JOINT MOTION FOR PROTECTIVE
ORDER, GRANTING SSU'S MOTION FOR A PROTECTIVE ORDER,
DENYING OPC'S MOTION TO COMPEL, MOTION FOR A
CONTINUANCE AND REQUEST FOR SANCTIONS, AND GRANTING OPC'S
MOTION TO AMEND THE ORDER ESTABLISHING PROCEDURE

This Order addresses motions filed by the parties in this docket relating to discovery and the schedule of events. Each motion is addressed separately below.

SSU AND LGI'S JOINT MOTION FOR PROTECTIVE ORDER

On August 15, 1994, the Office of Public Counsel (OPC) served its First Set of Interrogatories and First Set of Requests for Production of Documents to Southern States Utilities, Inc. (SSU). On that same date, OPC served its First Set of Interrogatories and First Set of Requests for Production of Documents to Lakeside Golf, Inc. (LGI).

On August 31, 1994, SSU and LGI filed a joint motion for a protective order relating to the following discovery requests made by OPC: Interrogatory No. 3 and Document Requests Nos. 5, 6, and 7 propounded to SSU; Interrogatory No. 3 and Document Requests Nos. 5, 6, 7, and 8 propounded to LGI; and Interrogatory No. 7 propounded to SSU.

Interrogatory No. 7 propounded to SSU requests that SSU:

State any prior Commission or Court case upon which SSU intends to rely as precedent or other authority for any position urged by SSU in this case. For each identified case or other authority, state its perceived controlling or persuasive aspects, including any similarity to the instant case.

SSU argues that Interrogatory No. 7 is an improper request in that it seeks legal theories, opinions and conclusions of SSU and its counsel. SSU contends that these legal theories, opinions or conclusions are attorney work product and exempt from discovery.

DOCUMENT NUMBER-DATE

10171 OCT-5 1994

FPSC-RECORDS/REPORTING

In its response to motion for protective order, OPC withdrew Interrogatory No. 7 to the extent that it asks for the attorney's interpretation of a case, and amended its request by striking the second sentence of the interrogatory. OPC argues that SSU should answer Interrogatory No. 7 as amended because it only asks for the cases and is the sort of interrogatory frequently propounded upon parties before the Commission. OPC also points out that it has answered similar questions posed to it by SSU.

OPC's response is not persuasive. Although it has withdrawn its request for an analysis of the cases, OPC's Interrogatory No. 7 as amended still requires SSU to provide the cases or precedents upon which its positions are based. The identity of the cases or precedents directly relate to the legal theories of SSU's counsel, and, as such, are protected from discovery. Therefore, SSU's motion for a protective order as to Interrogatory No. 7 is granted.

As to the remaining discovery requests at issue, SSU and LGI argue that the requests are extremely broad in scope and include communications which are protected by the attorney-client or work product privilege. SSU and LGI have agreed to provide OPC with all information which is not privileged, and seek a protective order to avoid any misunderstanding among the parties with regard to the information which has been withheld. SSU and LGI request protection from providing documents and communications, which include oral and written communications between SSU and LGI and their respective counsels, notes of such oral communications, and retained drafts of prefiled testimony.

In response to SSU and LGI's contentions, OPC states that there is no allegation that any of the documents sought include privileged information. OPC argues that the Commission should not base a protective order on the movants' suspicions, but should conduct an in camera inspection of the materials.

OPC's request is overly broad and the materials which OPC seeks may be attorney work product and/or attorney-client communications. Therefore, SSU and LGI's Motion for Protective Order is granted as to oral and written communications between SSU and LGI and their respective counsels, notes of such oral communications, and retained drafts of prefiled testimony. To the extent not protected, SSU and LGI shall respond to the discovery requests propounded by OPC by October 14, 1994.

SSU'S MOTION FOR PROTECTIVE ORDER

On September 2, 1994, OPC served SSU with a Second Set of Interrogatories. Interrogatory No. 30 requested that SSU:

Identify the date of inquiry or discussion and name of each utility, the Company or its parent companies have attempted to acquire since January 1, 1992.

On September 21, 1994, SSU filed a motion for a protective order relieving SSU from providing an answer to Interrogatory No. 30. SSU argues that the fundamental issue in this proceeding is SSU's acquisition of the Lakeside Golf water system. OPC's inquiry into SSU's attempts to purchase other water systems is irrelevant to this proceeding and could not reasonably lead to admissible evidence.

In response to SSU's motion, OPC argues that SSU provided rebuttal testimony which addressed the impact an adverse decision would have upon the company's future acquisition of small systems. OPC argues that it should be allowed to discover whether acquisition adjustment considerations impacted SSU's past decisions to purchase systems. Interrogatory No. 30 seeks material "which will test that thesis in the past."

Rule 1.280(b) of the Florida Rules of Civil Procedure permits parties to obtain discovery regarding any non-privileged matter that is relevant to the subject matter of the pending action. Even if the information would be inadmissible at trial, it may be the subject of discovery if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. The information sought by OPC in Interrogatory No. 30 is not relevant to the subject matter of this action in that it seeks information not related to the acquisition of the Lakeside Golf water system. Furthermore, the information sought does not appear to be reasonably calculated to lead to the discovery of admissible evidence. Therefore, SSU's motion for a protective order relating to Interrogatory No. 30 is granted.

OPC'S MOTION TO COMPEL, MOTION FOR CONTINUANCE,
AND REQUEST FOR SANCTIONS

On September 23, 1994, OPC filed a motion to compel SSU to comply with Document Requests Nos. 5, 6, and 7 and Interrogatory No. 3, served upon SSU on August 15, 1994. These discovery requests are the subject of SSU and LGI's joint motion for a protective order filed on August 31, 1994, which has previously been granted herein. Therefore, OPC's request for a motion to compel, continuance and sanctions is denied.

OPC'S MOTION TO AMEND ORDER ESTABLISHING PROCEDURE

Order No. PSC-94-0485-PCO-WU, issued April 25, 1994, established the controlling dates and schedule of events in this

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docket. That order required discovery to be completed by September 23, 1994. On September 23, 1994, OPC filed a motion to amend Order No. PSC-94-0485-PCO-WU to allow further time for discovery. OPC has noticed three individuals for deposition and wishes to conduct those depositions after September 23, 1994.

In support of its request, OPC states that SSU has relied upon a theory which necessitates inquiries into matters which would not otherwise be relevant, and has therefore expanded the subject matter of this docket.

The final hearing is not scheduled until October 31, 1994. Therefore, an extension of time to conduct discovery can be accommodated. The date for the completion of discovery shall be revised, so that parties may conduct discovery until October 14, 1994. However, parties may not inquire into matters deemed protected by this Order or any other order issued in this docket.

The revision of the discovery completion date necessitates the revision of other scheduled events in this docket. Therefore, Order No. PSC-94-0485-PCO-WU has been revised to the extent set forth below:

Discovery Complete	October 14, 1994
Revised Prehearing Statements	October 19, 1994*
Prehearing Conference	October 24, 1994

*Parties may update their previously filed prehearing statements and shall take positions on all issues.

Order No. PSC-94-0845-PCO-WU is affirmed in all other respects.

It is, therefore,

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that Southern States Utilities, Inc., and Lakeside Golf Inc.'s, Joint Motion for Protective Order is granted to the extent set forth in the body of this Order. It is further

ORDERED that Southern States Utilities, Inc.'s, Motion for Protective Order relating to Interrogatory No. 30 propounded by the Office of Public Counsel, is granted. It is further


ORDERED that the Office of Public Counsel's Motion to Compel, Motion for Continuance, and request for sanctions is denied. It is further

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ORDERED that the Office of Public Counsel's Motion to Amend Order Establishing Procedure is granted to the extent set forth in the body of this Order. It is further

ORDERED that all other aspects of Order No. PSC-94-0485-PCO-WU remain in effect.

By Order of Commissioner Diane K. Kiesling, as Prehearing Officer, this 5th day of October, 1994.


DIANE K. KIESLING, Commissioner
and Prehearing Officer

(S E A L)

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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.