

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 951056-WS
increase in Flagler County by) ORDER NO. PSC-96-0818-PCO-WS
Palm Coast Utility Corporation.) ISSUED: June 24, 1996
_____)

ORDER ON OBJECTIONS TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
AND
THIRD MOTION TO COMPEL

On May 28, 1996, Palm Coast Utility Corporation (PCUC) filed its Objection to Citizens' 3rd Set of Interrogatories, No. 73. On June 7, 1996, PCUC filed its Objections to Citizens' Fourth Set of Interrogatories and Fourth Set of Requests for Production of Documents to PCUC. On June 14, 1996, the Office of Public Counsel (OPC or Citizens) filed its Citizens' Third Motion to Compel. On June 21, 1996, PCUC filed its Memorandum in Opposition to Citizens' Third Motion to Compel.

Interrogatory No. 73

By Interrogatory No. 73, OPC has requested as follows:

Provide the gallons of water sold to each of the above water customer groups identified in POD No. 72, by month, for the year 1995.

PCUC objected as follows:

Objection. Unduly burdensome to provide breakdown on monthly basis, given the immense amount of discovery responses required of PCUC. Pursuant to OPC's request for production No. 65, PCUC is providing 1995 actual gallons sold by customer class and meter size. It is irrelevant to rate making what the monthly breakdown would be.

OPC untimely filed its response to PCUC's objection by way of its Citizens' Third Motion to Compel, filed June 14, 1996. Based upon review of OPC's Interrogatory No. 73 and PCUC's objection, the objection is sustained. PCUC is providing similar information through Document Request No. 65. Therefore, PCUC shall not be required to respond to OPC's Interrogatory No. 73.

Citizens' Fourth Set of Interrogatories
and Requests for Production of Documents

The order establishing procedure, Order No. PSC-96-0577-PCO-WS, issued May 2, 1996, requires in part:

DOCUMENT NUMBER-DATE

06739 JUN 24 1996

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FPSC-RECORDS/REPORTING

Unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 100, and requests for production, including all subparts, shall be limited to 100.

PCUC objected to OPC's fourth set of discovery as a whole on the grounds that each set exceeds the limits set forth in the order establishing procedure. In addition, PCUC objects to certain of OPC's fourth set of document requests on an individual basis, unconnected to the argument that they exceed the discovery limits.

OPC argues that PCUC's objection on exceeding discovery limits is groundless and should be disregarded. Alternatively, if the Commission finds that OPC has exceeded discovery limits, it requests the Commission to authorize its fourth set of discovery and direct PCUC to respond to such discovery on an expedited basis.

Upon review of PCUC's objections, OPC's Third Motion to Compel, and PCUC's memorandum, it appears that OPC has exceeded the limits set forth for discovery in Order No. PSC-96-0577-PCO-WS. However, OPC's alternative request is granted and Order No. PSC-96-0577-PCO-WS is modified and the number of permissible interrogatories and requests for production is hereby expanded to accommodate the discovery included in OPC's fourth sets of interrogatories and requests for production. Furthermore, OPC's Third Motion to Compel is granted for the following interrogatories and requests for production that PCUC did not object to on an individual basis as set forth below: Interrogatories Nos. 80 through 86 and Document Requests Nos. 71, 73, 75, and 77. To the extent required by the provisions of this Order, PCUC shall provide responses to OPC's fourth sets of discovery by June 28th, 1996.

Individual Objections

PCUC objects on an individual basis to OPC's Document Requests Nos. 68-70, 72, 74, and 76.

a. Document Requests Nos. 68, 69, and 74

By Document Request No. 68, OPC has requested as follows:

Please provide a copy of example lot purchase agreements between ITT Community Development Corporation (ICDC) and lot purchasers which in anyway holds the lot purchaser financially responsible to ICDC for the maintenance and/or other costs associated with water and or sewer collection, transmission, and/or distribution lines that are considered non-used and useful.

PCUC objected as follows:

Objection. Irrelevant and as such, not in the possession, custody, or control of PCUC; not reasonably calculated to lead to admissible evidence. PCUC is not a party to such agreements. PCUC does not collect any such costs from ICDC's lot purchasers.

By Document Request No. 69, OPC has requested as follows:

Please provide a copy of example lot purchase agreements between ICDC and lot purchasers which in anyway allows or requires the lot purchaser to prepay water and wastewater CIAC, service availability charges, hook-up fees, and/or the like.

PCUC objected as follows:

Objection. Irrelevant and as such, not in the possession, custody, or control of PCUC; not reasonably calculated to lead to admissible evidence. PCUC is not a party to such agreements. PCUC does not collect CIAC or the charges referred to from ICDC's lot purchasers.

By Document Request No. 74, OPC has requested as follows:

Please provide a copy of the March 26, 1974 offering statement referenced on page 10 of 10 of the May 12, 1994 offering statement included in the additional MFRs.

PCUC objected as follows:

Objection. Irrelevant; not reasonably calculated to lead to the discovery of admissible evidence in this case.

OPC argues that Document Requests No. 68 is relevant to the issue of used and useful and the need for a margin reserve, and Document Request No. 69 is relevant to used and useful and the amount of CIAC that is included as an offset to rate base. Furthermore, OPC argues that Document Request No. 74 is relevant since the Commission requires the most recent offering statement as part of the utility's minimum filing requirements.

These requests do not appear to be relevant to this proceeding. They appear to be requests for contracts between a non-regulated company and lot purchasers who may or may not become customers of PCUC. Accordingly, OPC's motion to compel production of these documents is denied.

b. Document Request No. 70

By Document Request No. 70, OPC has requested as follows:

Please provide a copy of all workpapers and source documents used by the Company to calculate reuse revenue included in the MFRs.

PCUC objected as follows:

Objection. This information has already been produced to OPC through PCUC's response to OPC's Document Request No. 66 and PCUC's response which will be produced to OPC's Interrogatory No. 79.

OPC withdraws this document request pending satisfactory responses to Document Request No. 66 and Interrogatory No. 79. Therefore, a ruling is unnecessary.

c. Document Request No. 72

By Document Request No. 72, OPC has requested as follows:

For purposes of this request please refer to Attachment 36, and the Revenue Agreement between ITT Community Development Corporation and the Company. Please provide for each month of 1994 and 1995, the Exhibit B calculation used to determine the amount of availability fee charged to ICDC.

PCUC objected as follows:

Objection. PCUC has produced this information on an annual basis for 1994 and 1995 in its Supplemental Response to OPC's Interrogatory No. 47. Breakdown by month gives no useful, additional information. The request is therefore irrelevant; not reasonably calculated to lead to the discovery of admissible evidence and is unduly burdensome and oppressive.

OPC argues that the request is not unduly burdensome and oppressive. Based on review of the objection, motion to compel, and memorandum, OPC's motion to compel is denied with respect to this document request.

d. Document Request No. 76

OPC has withdrawn this document request. Therefore, a ruling is unnecessary.

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Based on the foregoing, it is

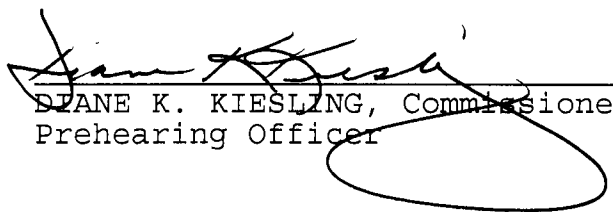
ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that Palm Coast Utility Corporation's objection to Citizens' Fourth Set of Interrogatories to Palm Coast Utility Corporation and Citizens' Fourth Set of Requests for Production of Documents to Palm Coast Utility Corporation as exceeding the discovery limits set forth in Order No. PSC-96-0577-PCO-WS is sustained. It is further

ORDERED that Order No. PSC-96-0577-PCO-WS is modified and the number of permissible interrogatories and requests for production is hereby expanded to accommodate the discovery included in the Citizens' Fourth Set of Interrogatories to Palm Coast Utility Corporation and the Citizens' Fourth Set of Requests for Production of Documents to Palm Coast Utility Corporation. It is further

ORDERED that the Citizens' Third Motion to Compel is granted for Interrogatories Nos. 80 through 86 and Document Requests Nos. 71, 73, 75, and 77. Palm Coast Utility Corporation shall provide responses to such discovery by June 28th, 1996. It is further

ORDERED that the Citizens' Third Motion to Compel is denied for Document Request No. 72.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 24th day of June, 1996.


DIANE K. KIESLING, Commissioner and
Prehearing Officer

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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 25-22.0376, 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.

MEMORANDUM

RECEIVED
JUN 24 1996

3:05

FPSC-RECORDS/REPORTING

JUNE 24, 1996

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (EDMONDS) *LE*
RE: DOCKET NO. 951056-WS - APPLICATION FOR RATE INCREASE IN
FLAGLER COUNTY BY PALM COAST UTILITY CORPORATION.

0818-PCU

Attached is an ORDER ON OBJECTIONS TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THIRD MOTION TO COMPEL to be issued in the above-referenced docket. (Number of pages in Order - 6)

*Please issue this order today.
(6/24/96)*

SKE/mw

Attachment

cc: Division of Water and Wastewater (Willis, Crouch, Merchant, Moniz, Rendell, Starling, Washington)

I: 951056MO.SKE

MUST GO TODAY

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