

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. For Orange-Osceola Utilities, Inc. In Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.

DOCKET NO. 950495-WS  
ORDER NO. PSC-99-0708-PCO-WS  
ISSUED: April 13, 1999

ORDER DENYING UTILITY'S MOTION FOR PROTECTIVE ORDER  
ON OPC'S FIRST SET OF INTERROGATORIES  
AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS ON REMAND

On March 15, 1999, pursuant to Rules 28-106.204 and 28-106.206, Florida Administrative Code, and Rule 1.280(c), Florida Rules of Civil Procedure, Florida Water Services Corporation (Florida Water or the utility) filed its Objections to the Office of Public Counsel's First Set of Interrogatories and Second Request for Production of Documents on Remand and Motion for Protective Order. On March 29, 1999, the Office of Public Counsel (OPC) filed Citizens's Response to Florida Water Corporation's Objections to Office of Public Counsel's First Set of Interrogatories and Second Request for Production of Documents on Remand and Motion for Protective Order.

Having reviewed the arguments in the utility's motion and in OPC's response, I hereby deny the utility's motion as set forth below.

In its Motion, Florida Water objects to OPC's Interrogatories Nos. 2, 3, 4, 5, 6, 7, 9, and 10. The utility also objects to OPC's Document Requests Nos. 3, 4, 5, 6, 8, and 10.

Interrogatory Nos. 2 and 3

OPC's Interrogatory No. 2 states:

DOCUMENT NUMBER-DATE

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For each of the company's water and wastewater systems provide the build-out ERC numbers or capacities for all of the water and wastewater lines included in this docket.

OPC's Interrogatory No. 3 states:

Please provide the methodology utilized to produce the estimated build-out ERC numbers requested in Question 2.

Florida Water objects to OPC's Interrogatory Nos. 2 and 3 on the grounds that by these interrogatories, OPC requests information for all of the utility's water and wastewater service areas, some of which are not at issue in this rate proceeding. The utility argues that since, on remand, the Court allowed the Commission the opportunity to justify its departure from its used and useful methodology for mixed use areas, the questions exceed the scope of the remand because not all of its services are in mixed use areas. Additionally, the utility argues that the build-out equivalent residential connection (ERC) numbers requested by OPC attempt to expand the scope of the remand beyond the minimum filing requirements (MFRs) and that build-out ERC numbers are irrelevant to an evaluation of test year used and useful. Accordingly, the utility concludes that the information requested by OPC is not reasonably calculated to lead to admissible evidence.

In response, OPC clarifies that it is only asking for information pertaining to the water and wastewater utilities included in this docket. Further, it seeks the requested information only for the systems which the utility deems mixed use systems. OPC, however, reserves the right to test and challenge whether the systems identified by the utility should in fact be considered mixed use systems by the Commission. With regard to Florida Water's argument that OPC's request for build-out ERC numbers inappropriately attempts to expand the scope of the remand beyond the MFRs, OPC states that minimum filing requirements are exactly that, the "minimum" information a utility is required to file with the Commission with an application for a rate increase. It argues that it is wrong to limit the parties to the "minimum" filing requirement. It further argues that the Court did not limit the discoverable evidence in this remand proceeding, only the issues, and that "[a]ny information requested which is relevant to the calculation of the used and useful methodologies on remand is fair game."

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I find that discovery in this area is proper. The Court remanded this case for the purpose of taking evidence, if it exists, to support the best methodology for determining used and useful in mixed use areas. The best methodology is a policy decision which necessarily requires inquiry and evaluation beyond the MFRs. Therefore, the information requested is reasonably calculated to lead to admissible evidence on the proper methodology for the calculation of used and useful percentages for the transmission, distribution, and collection facilities. See Calderbank v. Cazares, 435 So.2d 377 (Fla. 5th DCA 1983), and Rule 1.280(b)(1), Florida Rules of Civil Procedure. Florida Water shall furnish the information only for those systems it determines to be mixed use systems, but OPC shall have the right to challenge whether the systems identified by the utility should actually be considered mixed use systems.

Interrogatory No. 4

OPC's Interrogatory No. 4 states:

If the company can not furnish the estimated ERC numbers requested in Question 2, based upon a justifiable and verifiable methodology, then supply the best numbers with the best methodology available, regardless of the flaws.

The utility objects to OPC's Interrogatory No. 4, adopting and incorporating by reference its objections to OPC's Interrogatory No. 2. In addition, the utility objects on the grounds that it is not required to "create new documents, undertake new analyses, or create new studies or reports."

In response, OPC adopts and incorporates by reference its response to Florida Water's objections to Interrogatory No. 2. Further, it states that it "seeks only relevant information which is already known to Florida Water."

As with Interrogatory No. 2 above, I find that the information requested is reasonably calculated to lead to admissible evidence on the proper methodology for the calculation of used and useful percentages for the transmission, distribution, and collection facilities; therefore, OPC's request is appropriate. See Calderbank, 435 So.2d at 379. However, the utility shall not be required to create new documents, undertake new analysis, or create new studies or reports. See Order No. PSC-92-0819-PCO-WS, issued August 14, 1992, in Docket No. 920199-WS. If the requested

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information does not already exist, or is not already known to the utility, it shall simply so state in its response.

Interrogatory No. 5

OPC's Interrogatory No. 5 states:

Please provide the permitted capacity, identifying the permit numbers and the basis of the capacity (i.e. annual average daily flow (AADF), maximum month average daily flow (MMADF) or three month average daily flow (3MADF) for the test years 1994-1996, for the Buenaventura Lakes, Citrus Park, Leisure Lakes, Marco Island and Marco Shores wastewater treatment plants.

Florida Water objects to Interrogatory No. 5 to the extent that it requests information about the Leisure Lakes Wastewater Treatment plant. According to the utility, Leisure Lakes is not at issue in the remand stage of this proceeding, and therefore, the information requested with regard to it is not reasonably calculated to lead to the discovery of admissible evidence.

OPC disagrees with Florida Water that the level of used and useful for Leisure Lakes is not at issue in this remand proceeding. It states that because the utility, perhaps erroneously, included the Leisure Lakes plant with seven other systems in its appeal to the District Court, Leisure Lakes' used and useful percentage became an unresolved issue. OPC argues that the utility could have even dismissed its appeal with regard to Leisure Lakes when it learned of the Commission's inadvertent use of the maximum month average daily flow (MMADF) methodology in the numerator of its calculation of used and useful for Leisure Lakes, rather than the average annual daily flow (AADF) methodology used for the other seven systems. Not having done so, however, the utility cannot now complain that Leisure Lakes remains at issue. OPC further argues that since the District Court, when it remanded the issue back to the Commission to take evidence concerning the best methodology, made no separate mention of Leisure Lakes or the Commission's inadvertent mistake, Leisure Lakes' used and useful percentage should remain an unresolved issue until it is disposed of by an order of the District Court, an order of the Commission on remand without an appeal, or by a timely voluntary dismissal by Florida Water.

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At the March 30, 1999 Agenda Conference, the Commission concluded that although the actual used and useful calculations for Leisure Lakes were performed using MMADF, we intended to use AADF, and in fact indicated such on the schedules attached to the initial final order. Therefore, the Commission determined that Leisure Lakes' used and useful percentage shall remain an issue in the remand proceedings.

Accordingly, Florida Water shall provide the information requested in Interrogatory No. 5 with regard to Leisure Lakes.

Interrogatory Nos. 6 and 7

OPC's Interrogatory No. 6 states:

Please furnish the total annual water sold, by customer category (i.e. single family residential, multi-family residential, commercial, general service), identifying year end number of customers for each category, for every water system included in this docket for the test years 1994, 1995, 1996 and the years 1997 and 1998.

OPC's Interrogatory No. 7 states:

Utilizing the methodology proposed by the company, please identify the year end ERC numbers for each water system included in this docket for the test years 1994, 1995, 1996 and for the years 1997 and 1998.

The utility objects to OPC's Interrogatory Nos. 6 and 7 on the grounds that the requested information exceed the test year used for ratemaking in this rate case and the scope of the remand. According to the utility, total annual water sold for the years 1994, 1995 and 1996 (projected for 1995 and 1996), although irrelevant, was already provided to OPC in the MFRs. The utility argues that "it would . . . open the floodgates over the finite issues which the court remanded to the Commission for further evaluation, if factual information created after the final hearing on this matter were considered discoverable, let alone admissible evidence."

In response, OPC adopts and incorporates by reference its response to Florida Water's objections to Interrogatory No. 2, which basically is that any information relevant to the calculation of the used and useful methodologies on remand is reasonably

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calculated to lead to admissible evidence. OPC adds that the information requested for 1997 and 1998 will "help test the validity of the assumptions underlying the two competing methodologies."

Again, I find that the best methodology for determining used and useful is a policy determination which requires an evaluation beyond the MFRs. OPC states that it intends to use the information that goes beyond the test year to help test the validity of the used and useful methodologies under consideration, not for true-up purposes. Therefore, OPC's inquiry is reasonably calculated to lead to admissible evidence. See Calderbank, 435 So.2d at 379. If indeed the total annual water sold for the years 1994, 1995 and 1996 (projected for 1995 and 1996) was already provided to OPC in the MFRs, the utility shall simply so state in its response to the discovery request.

Interrogatory No. 9

OPC's Interrogatory No. 9 states:

Describe all differences between the lot count method adopted by the Commission in Docket No. 950495-WS and the lot count method proposed by the company in Docket No. 950495-WS.

The utility objects to Interrogatory No. 9 "based on the incorrect statement underlying the interrogatory that Florida Water proposed a lot count method in this rate case" for the determination of used and useful.

In response, OPC argues that Florida Water's MFRs contain "connected lots and number of lots, the ratio of which is used to calculate the used and useful percentage for water and wastewater lines." According to OPC, if the utility was not proposing the lots to lots methodology in its MFRs, an explanation is requested. If, however, the utility was proposing the lot count methodology, but no longer endorses it, it should so respond to the interrogatory. Alternatively, if the utility was proposing the lot count methodology and continues to endorse it, it should be ordered to answer the interrogatory.

Upon review of the utility's MFRs, the utility did indeed present information as to a lot count methodology. Therefore, OPC's discovery in this area is proper, and the information

requested is reasonably calculated to lead to admissible evidence. See Calderbank, 435 So.2d at 379. The utility shall either provide an explanation of the methodology it was proposing in its MFRs, or respond as appropriate to the interrogatory.

Interrogatory No. 10

OPC's Interrogatory No. 10 states:

For each of the company's water and wastewater systems, please provide the following information, if available. If the exact information is not available, but similar information is available, please provide the similar information.

- (a) The total number of lots where service is available as of December 31, 1994, December 31, 1995 and December 31, 1996.
- (b) The total number of lots connected as of December 31, 1994, December 31, 1995 and December 31, 1996.
- (c) The total number of single family residential lots where service is available as of December 31, 1994, December 31, 1995 and December 31, 1996.
- (d) The total number of single family residential lots connected as of December 31, 1994, December 31, 1995 and December 31, 1996.
- (e) The total number of commercial and general service lots where service is available as of December 31, 1994, December 31, 1995 and December 31, 1996.
- (f) The total number of commercial and general service lots connected as of December 31, 1994, December 31, 1995 and December 31, 1996.

The utility objects to Interrogatory No. 10 on the grounds that the requested information "pertains to all of Florida Water's water and wastewater systems, some of which are not part of this rate case proceeding." Additionally, the utility argues that actual number of connected lots for 1994 and projected connections for 1995 and 1996 were provided in its MFRs, and to the extent that OPC requests updates for 1995 and 1996, it is inappropriately

attempting to use the remand proceedings as a true-up vehicle. The utility also argues that the information requested in subparts (c)-(f) does not exist.

In response, OPC reiterates that it is only seeking information pertaining to the systems included in this docket and which the utility deems mixed use systems, while reserving the right to test and challenge whether the systems identified by the utility should in fact be considered mixed use systems by the Commission. With regard to the utility's argument that OPC's request for information pertaining to the years 1995 and 1996 is an inappropriate attempt to use the remand proceedings as a true-up vehicle, OPC adopts and incorporates its response to the utility's objection to Interrogatory No. 2. Any information relevant to the calculation of the used and useful methodologies on remand is reasonably calculated to lead to admissible evidence. Furthermore, OPC states that if the information sought in subparts (c)-(f) does not exist, Florida Water should just so state in its answer to the interrogatory.

OPC states that it intends to use the information that goes beyond the test year to help test the validity of the used and useful methodologies under consideration, not for true-up purposes. Therefore, I find that the requested information is reasonably calculated to lead to admissible evidence. The utility's response, however, shall be limited to the systems included in this docket and which the utility deems mixed use systems. OPC shall have the right to challenge whether the systems identified by the utility should actually be considered mixed use systems by the Commission. As for subparts (c)-(f), the utility shall respond to the questions or state that the information does not exist.

Document Request Nos. 3 and 4

By Document Request No. 3, OPC requests the following:

Please provide the most recent DEP operating permits, and construction permits, if different, for the following wastewater treatment plants: Buenaventura Lakes, Citrus Park, Leisure Lakes, Marco Island and Marco Shores.

By Document Request No. 4, OPC requests the following:

Please provide the recent engineering and the design reports for the following wastewater treatment plants:



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Buenaventura Lakes, Citrus Park, Leisure Lakes, Marco Island and Marco Shores.

Florida Water adopts and incorporates by reference its objections to Interrogatory Nos. 5 and 6 as they pertain to Document Request Nos. 3 and 4.

Likewise, OPC adopts and incorporates by reference its response to the utility's objections to Interrogatory Nos. 5 and 6 as they pertain to Document Request Nos. 3 and 4.

As stated previously, the Commission, at the March 30, 1999 Agenda Conference, concluded that the utility's appeal with regard to Leisure Lakes was based upon a true intent to use AADF rather than MMADF, and that therefore, Leisure Lakes' used and useful percentage shall remain an issue in the remand proceedings. Accordingly, Florida Water shall provide the information requested in Document Request Nos. 3 and 4 with regard to Leisure Lakes.

Document Request Nos. 5, 6, 8, and 10

By Document Request No. 5, OPC requests the following:

Please provide any and all memoranda, letters, or other documents in the company's possession, custody or control which addresses the deficiencies in the Commission's use of the average annual daily flow in the numerator of the used and useful calculation for wastewater treatment plants.

By Document Request No. 6, OPC requests the following:

Please provide any and all memoranda, letters, or other documents in the company's possession, custody or control which addresses the deficiencies in the Commission's use of the lot count method for determining the used and usefulness of water transmission or distribution lines and wastewater collection lines which serve residential, commercial and general service systems.

By Document Request No. 8, OPC requests the following:

Please provide all analyses, workpapers, memoranda, and other documents prepared by or for the company which address, discusses, or quantifies the impact of the

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Commission's use of the lot count method for determining the used and usefulness of water transmission and distribution lines and wastewater collection lines as compared to any other methodology.

By Document Request No. 10, OPC requests the following:

Please provide all analyses, workpapers, memoranda, and other documents prepared by or for the company which examines, addresses or evaluates the use of the lot count method for determining the used and usefulness of water transmission and distribution lines and wastewater collection lines and its impact upon mixed use systems (those serving residential, commercial and general service customers).

Florida Water objects to Document Request Nos. 5, 6, 8, and 10 to the extent they request "documents prepared in anticipation of the final hearing which constitute and contain privileged attorney-client and/or work product information." The utility states that to the extent the information exists and falls outside of the cited privileges, it will produce it.

In response, OPC states that it does not seek any privileged information, but that all documents which are not so protected should be furnished.

Accordingly, Florida Water is directed to furnish the information requested, to the extent it exists, and to the extent it is not protected by attorney-client or work product privilege.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Florida Water Services Corporation's Motion for Protective Order on certain portions of Office of Public Counsel's First Set of Interrogatories and Second Request for Production of Documents on Remand is hereby denied as set forth in the body of this Order.

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By ORDER of Commissioner J. Terry Deason as Prehearing  
Officer, this 13th day of April, 1999.

A handwritten signature in black ink, appearing to read "J. Terry Deason", is written over a solid horizontal line.

J. TERRY DEASON  
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 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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.