

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate
increase by Peoples Gas System.

DOCKET NO. 020384-GU
ORDER NO. PSC-02-1613-PCO-GU
ISSUED: November 21, 2002

ORDER ON DISCOVERY MOTIONS

On October 7, 2002, the Office of Public Counsel (OPC) filed a Motion to Strike Testimony, or in the Alternative, Expedited Motion to Compel Production and Responsive Answers to Discovery Requests and Extend Filing Date for Testimony. The Motion requested that the Prehearing Officer order any testimony regarding the costs, charges and/or expenses associated with OPC's Requests for Production of Documents Nos. 2, 4, 12, 15, and 17, and Interrogatory Nos. 50, 51, 52, and 53, be stricken as unsupported by evidence withheld from the Commission. In the alternative, OPC requested that the Prehearing Officer order Peoples Gas System (Peoples) to provide all responsive documents in the possession, custody or control of TECO Energy, Inc., Tampa Electric Company, and TECO Partners, Inc. associated with OPC's Request for Production of Documents Nos. 2, 4, 12, 15, and 17, and to provide responsive answers to OPC's Interrogatory Nos. 50, 51, 52, and 53. In addition, OPC asked that the scheduled date for the filing of its testimony be extended to October 25, 2002, because the delay in receiving responsive discovery has had an adverse impact upon the preparation of testimony. Peoples filed a response to the motion on October 15, 2002.

Peoples filed a Motion for Temporary Protective Order on October 4, 2002, covering certain documents sought by OPC's First Set of Requests for Production of Documents Nos. 1, 2, 3, 8, 9, 22, 27, 36, 37, 45, 49, 50, 59, 63, 70, and 71. Then, on October 11, 2002, Peoples filed a Second Motion for Temporary Protective Order concerning two internal audit reports solicited by OPC's Request for Production of Documents No. 15. OPC filed no response to the Motions for Temporary Protective Order described above.

On November 14, 2002, Peoples filed a Motion to Strike Rebuttal Testimony of Mark A. Cicchetti, or in the Alternative, for Leave to File Surrebuttal Testimony. In the Motion, Peoples requests that Mr. Cicchetti's rebuttal testimony be stricken because there is no provision in the Commission's rules, or in

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prior practices and policies of the Commission in electric or natural gas rate cases, which authorizes OPC to file his rebuttal testimony, and the matters covered in his rebuttal testimony should have been covered in Mr. Cicchetti's direct testimony. In the alternative, Peoples asks that it be afforded the opportunity to file surrebuttal testimony to Mr. Cicchetti's rebuttal testimony, in the interest of fairness, and because Peoples has the burden of proof in this proceeding. OPC filed a response to the motion on November 15, 2002.

Rule 28-106.211, Florida Administrative Code, grants broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case" Based upon this authority, and having considered the Motions and Responses, the rulings are set forth below.

I. OPC'S MOTION TO STRIKE TESTIMONY, OR IN THE ALTERNATIVE, MOTION TO COMPEL

OPC seeks an order striking any testimony filed by Peoples regarding the costs, charges, and/or expenses associated with OPC's Request for Production of Documents Nos. 2, 4, 12, 15, and 17, and Interrogatory Nos. 50, 51, 52, and 53. In the alternative, OPC requests that Peoples be compelled to provide expeditiously all responsive documents in the possession, custody, or control of TECO Energy, Inc., Tampa Electric Company, and TECO Partners, Inc. associated with OPC's Request for Production of Documents Nos. 2, 4, 12, 15, and 17, and to provide responsive answers to OPC's Interrogatory Nos. 50, 51, 52, and 53.

Request for Production of Documents Nos. 2, 4, 12, 15, 17

First, OPC argues that Peoples must produce responsive documents from its affiliated companies because Peoples is asking for costs that are allocated or directly charged to Peoples by its own affiliated companies. According to OPC, Peoples is "acting as one" with its parent corporations and other affiliates in this case. OPC cites to Order No. PSC-01-1725-PCO-EI, issued August 23, 2001, in Docket No. 010827-EI, which states at page 5:

"Whether a subsidiary may be compelled to obtain documents from a parent company or affiliate for discovery depends on consideration of three factors: 1) the corporate structure; 2) the non-party's connection to the transaction at issue; and, 3) the degree to which the non-party will benefit from an outcome favorable to the corporate party to the litigation. See Afros S.P.A. v. Krauss-Mafei Corp., 113 F.R.D. 127, 130 (D. Del. 1986)."

OPC asserts that the factors listed above are easily met in this proceeding because of the complex web of financial relationships among the companies in this case. The MFRs detail the monetary connections and benefits between Peoples and its affiliates: \$502,750 in direct charges from TECO BGA for engineering services; \$8.31 million in allocated charges from TECO Partners for sales and marketing services; \$13.09 million in allocated charges from Tampa Electric Company for various services; and, \$2.8 million in allocated charges from TECO Energy, Inc. for various services. OPC contends that these charges are all to be paid by Peoples' utility customers.

Next, OPC maintains that it is OPC's responsibility to ensure that the Commission has before it the necessary information and documentation regarding any of the allocations to Peoples from its sister and parent companies, in order to accurately determine whether the costs are reasonable and appropriate, and should be included in the requested increase in rates. In support of that position, OPC cites to Section 366.093(1), Florida Statutes, which states that:

"The Commission shall continue to have reasonable access to all public utility records and records of the utility's affiliated companies, including its parent company regarding transactions or cost allocations among the utility and such affiliated companies, and such records necessary to ensure that a utility's ratepayers do not subsidize nonutility activities."

To that end, OPC requests that Peoples be compelled to provide all responsive documents to OPC's Request for Production of Documents Nos. 2, 4, 12, 15, and 17.

In response, Peoples argues that the documents sought by OPC in Request for Production of Documents Nos. 2, 4, and 12 are not Peoples' documents, and are not within its possession, custody, or control. The Tampa Electric Company (TECO) financial, budget, and budget variance documents sought by OPC belong to TECO, which is not a party to this proceeding. Peoples cites to Rule 1.350, Florida Rules of Civil Procedure, which provides that a party need only respond to discovery requests with documents that are in its possession, custody, or control.

Peoples maintains that OPC is not adversely affected in the preparation of its testimony, or in the case generally, by not having access to the documents requested, which are the documents of a company not a party to this proceeding. According to Peoples, it is an operating division of the TECO entity, but its books and records, natural gas operations, and employees are entirely separate from the books and records, electric operations, and employees of TECO. Financial and budgetary information with respect to the electric operations of TECO are not relevant to the determination of the reasonableness of Peoples' cost of providing service. Peoples avers that all documents requested by OPC that relate to the charges and allocations from TECO have been provided to OPC. Indeed, the TECO documents requested by OPC will provide neither the Commission nor OPC any information bearing on the reasonableness of costs incurred by Peoples, including costs charges or allocated to Peoples by TECO. The TECO documents sought by OPC relate to TECO's costs, not to Peoples' costs. The documents will show what TECO pays to provide services for Peoples, itself and other affiliated companies, not what Peoples pays or is budgeted to pay for the services rendered by TECO.

Peoples states that it has provided for inspection and copying to OPC: 1) all of Peoples' general ledgers for the years requested; 2) the invoices to Peoples for every charge or allocation of expense by TECO (and by TECO Energy, Inc., Peoples' ultimate parent company); 3) Peoples' trial balances for the years requested; and 4) every document requested by OPC relating to TECO Partners, Inc., which provides sales and marketing for Peoples. In addition, OPC was provided the TECO Energy Shared Resources reports for 2000, 2001, and 2002, which details the budgeted charges from TECO to Peoples. In regard to the allocation of general and administrative expense to Peoples from TECO Energy, Inc., Peoples states that it

provided to OPC: 1) every invoice to Peoples from TECO Energy for the years requested, together with line item detail for each allocation; 2) an identification of the percent each amount allocated represented in relation to the total amount being allocated to all TECO Energy companies; 3) for a representative month, detail for the calculation of the percent being allocated to Peoples; and 4) a description (provided by TECO Energy) of how the allocations are determined.

Peoples rebuts OPC's reliance on Order No. PSC-01-1725-PCO-EI, and addresses each prong of the test adopted in that Order. First, Peoples states that while Peoples and TECO are part of the same corporate entity, they have completely separate officers and employees, operate different systems in different geographic areas of the state of Florida, and maintain completely separate books and records. Second, Peoples maintains that it and TECO operate as completely separate utilities, one providing natural gas service, the other electric service. Peoples is a party to this proceeding and TECO is not. Detailed information regarding the transactions between TECO and Peoples, and the directly billed or allocated costs associated, have been provided to OPC. Finally, Peoples asserts that TECO will derive no benefit from whatever rate relief the Commission may grant Peoples in this proceeding.

Next, Peoples distinguishes the facts in Order No. PSC-01-1725-PCO-EI, as well as the case underlying the opinion, Afros S.P.A. v. Krauss-Mafei Corp., 113 F.R.D. 127, 130 (D. Del. 1986), from the instant proceeding. Peoples states that the Order was issued in a proceeding on Gulf Power Company's petition for approval of recovery through the cost recovery clauses of the purchased power arrangement for Smith Unit 3. Peoples maintains that in the Order in question, the Prehearing Officer compelled Gulf Power Company to produce information related to any meetings its affiliate had at which the decision to seek approval for the purchase agreement and/or sell Smith Unit 3 to Southern Power was discussed. Peoples argues that in this instance the documents sought by OPC were relevant to OPC's theory of the case, which is not the case in the instant proceeding. Peoples contends OPC has provided no explanation as to how the TECO documents requested are relevant to the issue of the reasonableness of Peoples' costs, or to any other issue in this case.

In Afros, the Afros company sued for infringement of its patent on mixing heads. The defendant, Krauss-Maffei Corporation (KMC), counterclaimed for Afros' infringement of patents held by KMC on the same or similar mixing heads. These patent rights were obtained by KMC by assignment from its parent. The court determined that virtually all decisions related to the transfer of the patent were made by the officers/directors of KMC's parent. KMC and its parent shared common officers, directors, and employees. Because of the common officers, directors, and employees, the parent's control of key decisions in the litigation, and the parent's "undeniable" connection to KMC's counterclaim for infringement of patent rights, the court found that KMC had the requisite control of the documents sought by Afros. The very subject of the litigation was the patents, as was the purchase power agreement in the Gulf Power Company case, according to Peoples. In the instant proceeding, Peoples and TECO conduct their entirely different operations separately, have different officers, directors, and employees, and TECO has no stake in the outcome of Peoples' rate case.

In an attempt to try to resolve the issues raised by OPC's Motion, Peoples states that it offered to provide to OPC, in lieu of the broad financial and budgetary information sought by OPC: 1) a list of all departments at TECO used for budget purposes; 2) for 2000, 2001, and 2002 to date, the departmental budget for each department at TECO that makes (or made) direct charges or allocations to Peoples; and, 3) for the same years, the actual expenses incurred by each department for which the department budget information was furnished (allowing OPC to calculate the variance between the budgeted and actual expenses). Peoples avouches that the full reports (PAR reports) for every TECO department that charges Peoples in the years requested, for all the years requested, would be in excess of seven feet high. In order to save time and money, and to provide the information in a more easily readable format, Peoples offers to compile a single-page report (also a PAR report) that shows, by month and type of expense or resources, the budgeted expenses for the TECO department that makes charges to Peoples. Peoples maintains that this shortened version would be easier for OPC to read and understand, while still providing the information offered to OPC in a brief fashion.

In summary, when considered in relation to the information provided to OPC in discovery with respect to Peoples' costs, the TECO documents sought by OPC will provide nothing OPC has not already obtained, according to Peoples. Therefore, Peoples argues that OPC's motion to compel production of TECO documents must be denied.

Lastly, Peoples argues that if it is not ordered to provide all or any of the documents sought by OPC, OPC's motion to strike testimony will be moot. Even if Peoples is required to produce all or some of the TECO documents, Peoples contends that OPC was not prejudiced in its preparation of testimony in this proceeding. The documents sought by OPC related to TECO's costs, not those of Peoples, which are the only costs at issue in this proceeding. Accordingly, whether or not Peoples is ordered to provide any or all of the documents sought by OPC, OPC's motion to strike testimony should be denied.

OPC's Request for Production of Documents No. 2 states:

Budgets. Provide a copy of all capital, expense, and revenue budget reports provided to management of Tampa Electric, TECO Energy and affiliates of PGS for the years 2000, 2001, 2002, and 2003. This includes monthly, annual and year-to-date budget documents in the most detailed format available.

Peoples' General Objection states:

Peoples objects to each Interrogatory and Request to the extent that the same exceed the proper scope of the Commission's inquiry about utility affiliates and/or the proper scope of discovery. Under Sections 366.05(9) and 366.093(1), *Florida Statutes*, the jurisdiction of the Commission with respect to the parent and affiliates of a utility is limited. Further, the scope of discovery from a party is limited to documents within the possession, custody or control of that party. See, e.g., *Southern Bell Telephone and Telegraph Co. v. Deason*, 632 So. 2d 1377 (Fla. 1994). Peoples' parent and affiliates are not parties to the proceeding in this docket.

OPC's Response to Peoples' General Objection states:

Citizens assert that these "Consolidated," "Preliminary," "General," objections are in no way "stated as to each," inasmuch as they fail to identify any specific discovery request. Citizens believe that these objections are thus inapplicable to Citizens' discovery requests.

Peoples' Response states:

Peoples does not have within its possession, custody or control documents responsive to this request, except certain documents to be produced in response to Category 1 of the Request.

OPC states that this request is necessary to review the reasonableness of these charges by affiliates and to help determine whether or not the amount included in the 2003 projected test year is reasonable and appropriate.

Upon review of the pleadings and consideration of the arguments, OPC's motion to compel as it relates to its Request for Production of Documents No. 2 is denied. Pursuant to Rule 1.280(b)(1), Florida Rules of Civil Procedure, "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." The information sought by OPC does not appear to be reasonably calculated to lead to the discovery of admissible evidence. Accordingly, OPC's motion to compel as it relates to OPC's Request for Production of Documents No. 2 is hereby denied.

OPC's Request for Production of Documents No. 4 states:

Budget Variance. Provide a copy of all budget variance and budget explanations reports provided to management of Tampa Electric, TECO Energy and PGS affiliates for the years 2000, 2001, 2002, and 2003. This includes monthly, quarterly, annual and year-to-date budget documents.

Peoples' General Objection states:

Peoples objects to each Interrogatory and Request to the extent that the same exceed the proper scope of the Commission's inquiry about utility affiliates and/or the proper scope of discovery. Under Sections 366.05(9) and 366.093(1), *Florida Statutes*, the jurisdiction of the Commission with respect to the parent and affiliates of a utility is limited. Further, the scope of discovery from a party is limited to documents within the possession, custody or control of that party. See, e.g., *Southern Bell Telephone and Telegraph Co. v. Deason*, 632 So. 2d 1377 (Fla. 1994). Peoples' parent and affiliates are not parties to the proceeding in this docket.

OPC's Response to Peoples' General Objection states:

Citizens assert that these "Consolidated," "Preliminary," "General," objections are in no way "stated as to each," inasmuch as they fail to identify any specific discovery request. Citizens believe that these objections are thus inapplicable to Citizens' discovery requests.

Peoples' Response states:

Peoples does not have within its possession, custody or control documents responsive to this request, except certain documents to be produced in response to Category 3 of the Request.

OPC states that this request is necessary to review the reasonableness of these charges by affiliates and to help determine whether or not the amount included in the 2003 projected test year is reasonable and appropriate.

Upon review of the pleadings and consideration of the arguments, OPC's motion to compel as it relates to its Request for Production of Documents No. 4 is denied. Pursuant to Rule 1.280(b)(1), Florida Rules of Civil Procedure, "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." The information sought by OPC does not appear to be reasonably calculated to lead to the discovery of admissible evidence. Accordingly, OPC's motion

to compel as it relates to OPC's Request for Production of Documents No. 4 is hereby denied.

OPC's Request for Production of Documents No. 12 states:

Budget to Actual. For Peoples Gas System, its affiliated sister companies, business units, operating systems, parents, and the ultimate parent provide the following: Copies of all budgets and historical financial statements presented to the board of directors or senior management for or during the years 2000, 2001, and 2002.

Peoples' General Objection states:

Peoples objects to each Interrogatory and Request to the extent that the same exceed the proper scope of the Commission's inquiry about utility affiliates and/or the proper scope of discovery. Under Sections 366.05(9) and 366.093(1), *Florida Statutes*, the jurisdiction of the Commission with respect to the parent and affiliates of a utility is limited. Further, the scope of discovery from a party is limited to documents within the possession, custody or control of that party. See, e.g., *Southern Bell Telephone and Telegraph Co. v. Deason*, 632 So. 2d 1377 (Fla. 1994). Peoples' parent and affiliates are not parties to the proceeding in this docket.

OPC's Response to Peoples' General Objection states:

Citizens assert that these "Consolidated," "Preliminary," "General," objections are in no way "stated as to each," inasmuch as they fail to identify any specific discovery request. Citizens believe that these objections are thus inapplicable to Citizens' discovery requests.

Peoples' Response states:

Certain documents for Peoples responsive to this category of the Request are also responsive to, and will be produced by Peoples in accordance with the response to, Category 8 of the Request. Copies of additional documents for Peoples responsive to this category of the

Request have been sent to the Office of Public Counsel. Peoples does not have within its possession, custody or control the documents requested for any of its affiliated companies (including its ultimate parent company), and has been advised that nothing in any of the documents requested for Tampa Electric Company in this category of the Request relates to Peoples.

OPC states that this request is necessary to review the reasonableness of these charges by affiliates and to help determine whether or not the amount included in the 2003 projected test year is reasonable and appropriate.

Upon review of the pleadings and consideration of the arguments, OPC's motion to compel as it relates to its Request for Production of Documents No. 12 is denied. Pursuant to Rule 1.280(b)(1), Florida Rules of Civil Procedure, "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." The information sought by OPC does not appear to be reasonably calculated to lead to the discovery of admissible evidence. Accordingly, OPC's motion to compel as it relates to OPC's Request for Production of Documents No. 12 is hereby denied.

OPC's Request for Production of Documents No. 15 states:

Internal Audit. For Tampa Electric, TECO Energy and PGS affiliates, provide the following: Copies of all internal audit reports for the years 1999, 2000, 2001, and 2002.

Peoples' General Objection states:

Peoples objects to each Interrogatory and Request to the extent that the same exceed the proper scope of the Commission's inquiry about utility affiliates and/or the proper scope of discovery. Under Sections 366.05(9) and 366.093(1), *Florida Statutes*, the jurisdiction of the Commission with respect to the parent and affiliates of a utility is limited. Further, the scope of discovery from a party is limited to documents within the possession, custody or control of that party. See, e.g.,

Southern Bell Telephone and Telegraph Co. v. Deason, 632 So. 2d 1377 (Fla. 1994). Peoples' parent and affiliates are not parties to the proceeding in this docket.

OPC's Response to Peoples' General Objection states:

Citizens assert that these "Consolidated," "Preliminary," "General," objections are in no way "stated as to each," inasmuch as they fail to identify any specific discovery request. Citizens believe that these objections are thus inapplicable to Citizens' discovery requests.

Peoples' Response states:

Peoples has sent to the Office of Public Counsel a list (prepared by TECO Energy Audit Services) of internal audit reports for Tampa Electric Company, TECO Energy, Inc., and Peoples' affiliates that charge or allocate costs to Peoples, together with one of such reports which involves allocation of costs to Peoples.

OPC has modified its No. 15 so it now states:

Internal Audit. Provide the actual reports that pertain to allocations to or from Peoples Gas System and provide a list of all reports for Tampa Electric Company, TECO Energy, Inc., and PGS affiliates that charge or allocate costs to Peoples Gas.

OPC states that this request is necessary to assist in determining whether the level included in the projected test year is reasonable and appropriate, and to learn whether there are any additional issues in the capital structure that OPC must address before the Commission. OPC specifically requested two reports of TECO Energy, Inc. from the list provided to OPC, and were denied production of either report. These are the 4/9/02 Restricted Stock Plan Agreed-Upon Procedures, and the 5/29/02 Treasury Dept. Total Debt-To-Capitalization Ratio Audit.

Peoples responds that it has provided to OPC the two internal audit reports specifically identified by OPC in its motion. Thus,

Peoples submits that it has rendered moot that portion of OPC's motion that relates to Request No. 15.

Since Peoples has voluntarily responded to OPC's Request for Production of Documents No. 15, it is not necessary to rule on OPC's motion to compel relating to this request. Accordingly, no ruling is required on OPC's motion to compel related to its Request for Production of Documents No. 15.

OPC's Request for Production of Documents No. 17 states:

Operating Plans. For Tampa Electric, TECO Energy and PGS affiliate, provide the following: Copies of all narrative and financial operating plans which describe the corporate goals and objectives for the years 2000, 2001, 2002, and 2003.

Peoples' General Objection states:

Peoples objects to each Interrogatory and Request to the extent that the same exceed the proper scope of the Commission's inquiry about utility affiliates and/or the proper scope of discovery. Under Sections 366.05(9) and 366.093(1), *Florida Statutes*, the jurisdiction of the Commission with respect to the parent and affiliates of a utility is limited. Further, the scope of discovery from a party is limited to documents within the possession, custody or control of that party. See, e.g., *Southern Bell Telephone and Telegraph Co. v. Deason*, 632 So. 2d 1377 (Fla. 1994). Peoples' parent and affiliates are not parties to the proceeding in this docket.

OPC's Response to Peoples' General Objection states:

Citizens assert that these "Consolidated," "Preliminary," "General," objections are in no way "stated as to each," inasmuch as they fail to identify any specific discovery request. Citizens believe that these objections are thus inapplicable to Citizens' discovery requests.

Peoples' Response states:

Peoples does not have within its possession, custody or control the documents requested for any of its affiliated companies (including its ultimate parent company) (if any), and has been advised that nothing in the documents requested in this category of the Request for Tampa Electric Company relates to Peoples.

OPC has modified its No. 17 so it now states:

Operating Plans. Provide the actual operating plans for TECO Energy and Tampa Electric Company and only those plans of other affiliates, which discuss Peoples Gas.

OPC states that this request is necessary to review the reasonableness of these charges by affiliates and to help determine whether or not the amount included in the 2003 projected test year is reasonable and appropriate. OPC has been refused production of the operating plans of TECO Energy, Inc. and Tampa Electric Company.

Peoples responds that it has provided to OPC copies of the actual operating plans for Tampa Electric Company for the years 2000, 2001, and 2002. Peoples further represents that TECO Energy, Inc. has no operating plan. Thus, Peoples submits that it has rendered moot that portion of OPC's motion as it relates to Request No. 17.

Since Peoples has voluntarily responded to OPC's Request for Production of Documents No. 17, it is not necessary to rule on OPC's motion to compel relating to this request. Accordingly, no ruling is required on OPC's motion to compel related to its Request for Production of Documents No. 17.

In addition, Peoples is directed to provide the single-page reports, which Peoples designates as PAR reports, to OPC that show, by month and type of expense or resource, the budgeted expenses for the TECO department that makes charges to Peoples. Peoples voluntarily offered to provide these documents, and it does not appear to be an overly burdensome process to compile these PAR reports. Accordingly, Peoples is directed to provide the single-page PAR reports done by departments to OPC by November 22, 2002.

Finally, no ruling is necessary on OPC's motion to strike any testimony regarding the costs, charges and/or expenses associated with OPC's Requests for Production of Documents Nos. 2, 4, 12, 15, and 17, and Interrogatory Nos. 50, 51, 52, and 53, as unsupported by evidence withheld from the Commission. Because Peoples was not compelled to produce any information by this Order, and was therefore not deemed to be withholding any evidence from the Commission, the motion is now moot. Accordingly, no ruling is required on OPC's motion to strike any testimony regarding the costs, charges and/or expenses associated with OPC's Requests for Production of Documents Nos. 2, 4, 12, 15, and 17, and Interrogatory Nos. 50, 51, 52, and 53, as unsupported by evidence withheld from the Commission.

Interrogatory Nos. 50-53

OPC requests that Peoples be compelled to provide responsive answers to OPC's Interrogatory Nos. 50-53. Due to the length of Peoples' responses to each of these interrogatories, each of the interrogatories in question is summarized. Interrogatory No. 50 requested an explanation and rationale for the increase in the projected 2003 amounts for Account 874 - Mains & Service Expense in relation to the three-year and five-year average expenses provided by Peoples. Interrogatory Nos. 51-53 requested the same information as No. 50, but for accounts 878, 890, and 902, respectively.

OPC maintains that Peoples' response to Interrogatory No. 50 is nonresponsive, as it consisted of a discussion of how costs for O&M overall have declined and an attachment depicting that trend. Likewise, the responses to Interrogatory Nos. 51 and 52 are nonresponsive since they reference Peoples' response to Interrogatory No. 50. As to Interrogatory No. 53, OPC avers that Peoples' response is nonresponsive since it referred to some failed efforts of Peoples, as well as the fact that customer base has increased. As a result, OPC argues that none of the answers to these four interrogatories were responsive since they did not provide specific responses to each of the accounts enumerated in the interrogatories.

In response, Peoples states that it has now served more responsive answers to Interrogatory Nos. 50-53, and represents that

OPC has not asserted that any of the supplemental answers are non-responsive. Thus, Peoples submits that it has rendered moot that portion of OPC's motion as it relates to Interrogatory Nos. 50-53.

Since Peoples has voluntarily responded to OPC's Interrogatory Nos. 50-53, it is not necessary to rule on OPC's motion to compel relating to this request. Accordingly, no ruling is required on OPC's motion to compel as it relates to OPC's Interrogatory Nos. 50-53.

II. OPC'S MOTION TO EXTEND FILING DATE FOR TESTIMONY

OPC requests that the deadline for the filing of intervenor testimony be extended to October 25, 2002, because the delay in receiving discovery responses has had an adverse impact on the preparation of testimony by OPC's witnesses. OPC represents that Peoples does not object to an extension of time for the filing of intervenor testimony, as long as Peoples receives a like extension for the filing of rebuttal to the intervenor testimony. In response, Peoples states that it objects to an extension for the filing of OPC's testimony until October 25, 2002, but does agree to an extension until October 21, 2002, for the filing of OPC's testimony.

OPC was orally granted leave to extend the date for the filing of its testimony to October 21, 2002, based upon the fact that Peoples did not object to the extension of time; however, Peoples did not receive a like extension of time to file its rebuttal testimony due to the shortened time schedule of this docket. This Order serves to memorialize that decision.

III. PEOPLES' MOTIONS FOR TEMPORARY PROTECTIVE ORDER

Motion Filed October 4, 2002

On October 4, 2002, Peoples filed a Motion for Temporary Protective Order, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code, covering certain documents sought by OPC's First Set of Requests for Production of Documents Nos. 1, 2, 3, 8, 9, 22, 27, 36, 37, 45, 49, 50, 59, 63, 70, and 71. Peoples argues that OPC seeks confidential proprietary information including the following: 1) capital,

expense, and revenue budget reports to the management of Peoples, its affiliates and parent company, containing sensitive financial and forecast information, specific plans for future projects, and other proprietary information; 2) federal income tax returns; 3) documents related to settlement of litigated claims against the company; 4) information on the compensation philosophy of Peoples and its parent company, along with payroll and incentive compensation information; 5) portions of Internal Revenue Service audits of the federal income tax returns filed by TECO Energy, Inc. as successor to Lykes Energy, Inc.; 6) workpapers of Peoples' witnesses in this proceeding containing proprietary information; 7) contract terms and conditions relating to additional pipeline capacity acquired by the company; 8) contractual data regarding services performed by contractors for the company; and, 9) other contractual data. If disclosed, this information would harm the competitive business of Peoples, the interests of the ratepayers and the company, as well as impairing Peoples' ability to contract for goods and services on favorable terms. Peoples seeks protection for these documents, and will provide documents responsive to OPC's requests as long as these documents can be marked confidential and are not publicly disclosed. Additionally, Peoples requests that the Commission require OPC to provide Peoples with notice of its intent to use these confidential documents in connection with the hearing.

Section 366.093(2), Florida Statutes, directs that all records produced pursuant to a discovery request for which proprietary confidential status is requested shall be treated by any party subject to public records law as confidential and exempt from the public records law, Chapter 119.07(1), Florida Statutes. Rule 25-22.006(6), Florida Administrative Code, codifies the Commission's policy protecting confidential information from public disclosure during the discovery process in a manner that is not overly burdensome to both parties. Rule 25-22.006, in pertinent part, states:

(6)(a) In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall

enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. The protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

Specifically, Rule 25-22.006(c), Florida Administrative Code, states that if a party allows OPC to inspect or take possession of utility information, then that "utility may request a temporary protective order exempting the information from section 119.07(1), F.S."

Upon review of the pleadings and consideration of the arguments, Peoples' Motion for Temporary Protective Order, filed on October 4, 2002, shall be granted in part. Peoples has demonstrated that the material requested by OPC appears to be proprietary confidential business information concerning budget reports, federal income tax returns, settlement of litigated claims, compensation philosophy and incentive compensation, witness workpapers, contract terms and contractual data, as well as portions of Internal Revenue Service audits of federal income tax returns. Accordingly, this information will be granted temporary confidential status pursuant to Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code.

No ruling is necessary on Peoples' request that OPC be ordered to provide Peoples with notice of its intent to use these confidential documents in connection with the hearing. Order No. PSC-02-1031-PCO-GU, the Order Establishing Procedure, issued on July 30, 2002, provides for a seven day notice requirement concerning the use of confidential information at hearing. As such, OPC is already required to provide Peoples with seven days notice of its intent to use any confidential information at the hearing. Therefore, no ruling is required.

Motion Filed October 11, 2002

On October 11, 2002, Peoples filed a Second Motion for Temporary Protective Order, pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code,

covering certain documents sought by OPC's First Set of Requests for Production of Documents No. 15. Peoples argues that OPC seeks confidential proprietary information which consists of two internal audit reports entitled "TECO Energy, Inc. - Restricted Stock Plan Agreed-Upon Procedures," and "TECO Energy, Inc. - Treasury Department - Total Debt-to-Capitalization Ratio Audit." Peoples maintains that these internal audit reports are treated by TECO Energy, Inc. and Peoples, as confidential, and are entitled to be treated as confidential proprietary business information. Peoples seeks protection for these documents, and will provide documents responsive to OPC's requests as long as these documents can be marked confidential and are not publicly disclosed. Additionally, Peoples requests that the Commission require OPC to provide Peoples with notice of its intent to use these confidential documents in connection with the hearing.

Upon review of the pleadings and consideration of the arguments, Peoples' Motion for Temporary Protective Order, filed on October 11, 2002, shall be granted in part. Peoples has demonstrated that the material requested by OPC appears to be proprietary confidential business information consisting of internal audit reports. Accordingly, this information will be granted temporary confidential status pursuant to Section 366.093(2), Florida Statutes, and Rule 25-22.006(6), Florida Administrative Code.

For the reasons discussed above concerning Peoples' Motion for Temporary Protective Order, filed October 4, 2002, no ruling is necessary on Peoples' request that OPC be ordered to provide Peoples with notice of its intent to use these confidential documents in connection with the hearing.

IV. PEOPLES' MOTION TO STRIKE REBUTTAL TESTIMONY OF MARK CICHETTI, OR IN THE ALTERNATIVE, FOR LEAVE TO FILE SURREBUTTAL TESTIMONY

Peoples requests an order striking the rebuttal testimony filed by Mark Cicchetti on behalf of OPC, or in the alternative, leave to file surrebuttal to Mr. Cicchetti's rebuttal testimony.

In support of this Motion, Peoples states that there is no date assigned for the filing of rebuttal testimony by an intervenor

on the Case Assignment and Scheduling Record issued by the Commission. In addition, Peoples argues that OPC had its opportunity to address the direct testimony of Peoples' cost of capital witness, Dr. Roger Morin, when it filed intervenor testimony on October 21, 2002. Instead, on November 12, 2002, the date assigned for the filing of rebuttal testimony by the company, OPC filed the rebuttal testimony of Mark Cicchetti, responding to the direct testimony of Dr. Morin.

Peoples maintains that there is no provision in the Commission's rules, or in prior practices and policies of the Commission in electric or natural gas rate cases, which authorizes OPC to file Mr. Cicchetti's rebuttal testimony. The matters covered in this rebuttal testimony could have, and should have, been covered in Mr. Cicchetti's testimony filed October 21, 2002, according to Peoples; therefore, Mr. Cicchetti's rebuttal testimony should be stricken.

If the Commission does not elect to strike Mr. Cicchetti's rebuttal testimony, Peoples requests it be afforded the opportunity to file surrebuttal testimony. Peoples avers that principles of fairness alone lead to this result. Also, the burden of proof in this docket, as well as the burden of proceeding first with evidence that establishes a prima facie case for the relief sought in its petition rests with Peoples. This burden then shifted to staff and the intervenors once Peoples filed its direct testimony. OPC has had its opportunity to rebut Peoples' direct case, and that was on October 21, 2002, when it filed intervenor testimony. Peoples must have an opportunity to respond to OPC's rebuttal testimony through the filing of surrebuttal testimony by its expert Dr. Morin. Peoples requests that it be given until December 6, 2002, to file the surrebuttal testimony of Dr. Morin.

OPC responds that Order No. -PSC-02-1031-PCO-GU, the Order Establishing Procedure, does not identify any single party possessing the sole right to file rebuttal, nor does the Order provide any other dates for the filing of any other testimony. OPC maintains that it followed the governing dates established in the Order Establishing Procedure, and availed itself of the date established for the filing of rebuttal testimony by any party by filing the rebuttal testimony of Mark Cicchetti on November 12, 2002. If so directed, OPC states it would have added a section of

rebuttal testimony to accompany Mr. Cicchetti's direct testimony filed on October 21, 2002. Also, OPC avows that Mr. Cicchetti took no extra liberties in his filing, addressing in rebuttal fashion only the direct testimony filed by Dr. Morin.

Further, the Order Establishing Procedure does not provide for the filing of surrebuttal testimony; however, OPC has no objection to Dr. Morin filing late rebuttal testimony to Mr. Cicchetti's rebuttal testimony, if it is done within a reasonable time. As such, OPC states that it would be unfair to all parties to delay this supplemental filing beyond November 22, 2002.

Upon review of the pleadings and consideration of the arguments, Peoples' Motion to Strike Rebuttal Testimony of Mark A. Cicchetti is hereby denied; however, Peoples' Alternative Motion for Leave to File Surrebuttal Testimony is hereby granted. OPC is correct that the Order Establishing Procedure does not explicitly state that the date set for the filing of rebuttal testimony is exclusively for the benefit of the utility; however, since the utility has the burden of proof to show that the rate increase requested is justified, it should have the opportunity to respond to all arguments. Since there is no statute or rule directly on point, OPC's rebuttal testimony cannot be stricken. Accordingly, Peoples' Motion to Strike Rebuttal Testimony of Mark A. Cicchetti is hereby denied.

In the interest of fairness, and because Peoples has the burden of proof in this proceeding, they will be given leave to file surrebuttal testimony. The surrebuttal testimony will be filed by Peoples' cost of capital witness, Dr. Roger Morin, and will be limited to the scope of the rebuttal testimony filed by Mark Cicchetti. Since the hearing date is close at hand, the surrebuttal testimony shall be filed on or before November 22, 2002. Accordingly, Peoples' Alternative Motion for Leave to File Surrebuttal Testimony is hereby granted, and Dr. Roger Morin's surrebuttal testimony must be filed by November 22, 2002.

V. RESCHEDULING OF DATE FOR PREHEARING STATEMENTS AND PREHEARING CONFERENCE

By Order No. PSC-02-1031-PCO-GU, issued July 30, 2002, the deadline for the filing of prehearing statements was November 18,

2002, and a prehearing conference was scheduled for December 2, 2002. The Commission's calendar has required subsequent revisions to accommodate other scheduling requirements. Accordingly, the new deadline for prehearing statements is November 14, 2002, and the revised date for the prehearing conference is November 22, 2002.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the Motion to Strike Testimony, or in the Alternative, Expedited Motion to Compel Production and Responsive Answers to Discovery Requests filed by the Office of Public Counsel is denied in part, except where no ruling is necessary, as set forth in the body of this Order. It is further

ORDERED that Peoples Gas Company shall produce the documents discussed above in Part I by November 22, 2002. It is further

ORDERED that the deadline for the filing of intervenor testimony by the Office of Public Counsel is October 21, 2002. It is further

ORDERED that Peoples Gas Company's Motions for Temporary Protective Order, filed October 4, 2002, and October 11, 2002, are granted in part, except where no ruling is necessary, as set forth in the body of this Order. It is further

ORDERED that Peoples Gas Company's Motion to Strike Rebuttal Testimony of Mark A. Cicchetti, or in the Alternative, for Leave to File Surrebuttal Testimony is granted in part and denied in part, as set forth in the body of this order. It is further

ORDERED that the deadline for the filing of surrebuttal testimony by Roger A. Morin is November 22, 2002. It is further

ORDERED that the controlling dates are revised as set forth in the body of this Order. It is further

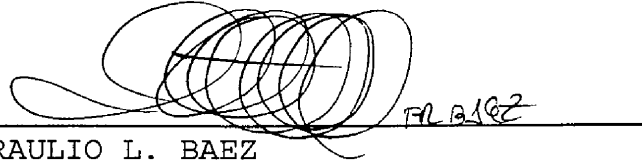
ORDERED that Order No. PSC-02-1031-PCO-GU is reaffirmed in all other respects.

ORDER NO. PSC-02-1613-PCO-GU

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 21st day of November, 2002.

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BRAULIO L. BAEZ
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 the Commission Clerk and Administrative Services, 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.