

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate
increase in Marion, Orange,
Pasco, Pinellas, and Seminole
Counties by Utilities, Inc. of
Florida.

DOCKET NO. 020071-WS
ORDER NO. PSC-03-0213-PCO-WS
ISSUED: February 12, 2003

ORDER GRANTING CITIZENS' FIRST, SECOND, THIRD, FOURTH,
AND FIFTH MOTIONS TO COMPEL DISCOVERY RESPONSES AND
MOTION TO STRIKE UNTIMELY PLEADINGS

BACKGROUND

On November 27, 2002, the Office of Public Counsel (OPC) filed its first Motion to Compel on behalf of the Citizens, in which it seeks this Commission to compel Utilities, Inc. (UIF or utility) to provide adequate responses to OPC's Interrogatories Nos. 2 and 8 from its First Set of Interrogatories to UIF, and to Interrogatories Nos. 20-22, 24, and 26-29 from its Second Set of Interrogatories to UIF. By this Motion, OPC also seeks to compel UIF to provide the documents responsive to Document Requests Nos. 3 and 5 from OPC's First Request for Production of Documents to UIF, and to Document Requests Nos. 14, 28, and 32 from OPC's Second Request for Production of Documents to UIF. UIF untimely filed a response to the Motion on December 20, 2002, along with an "Exhibit A," which appears to satisfy OPC's Document Request No. 3.

On November 27, 2002, UIF filed its Objections to Document Requests No. 49-55 from OPC's Fifth Request for Production of Documents. On December 4, 2002, OPC filed the Citizens' Second Motion to Compel, in which it seeks to compel UIF to provide responses to these Document Requests. UIF untimely filed a response to the Second Motion on December 20, 2002.

On December 24, 2002, OPC filed a Motion to Strike Untimely Pleadings, in which it moves to strike UIF's untimely-filed responses to the above-identified Motions to Compel.¹

¹Also on this date, UIF timely filed an its Objections to Interrogatories Nos. 102 and 111, from OPC's Eighth Set of

DOCUMENT NUMBER-DATE

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On January 17, 2003, OPC filed the Citizens' Third Motion to Compel, in which it seeks full responses to Interrogatories Nos. 6 and 11 from its First Set of Interrogatories to UIF, and to Interrogatories Nos. 23, 25, 31, and 35 from its Second Set of Interrogatories to UIF. Moreover, OPC requests that UIF be required to produce all documents responsive to its Document Request No. 4 from its First Request for Production of Documents, and to Document Requests Nos. 10, 11, 25, 30, 33, and 40 from its Second Request for Production of Documents. No response has been filed to the Motion.

On January 29, 2003, OPC filed the Citizens Fourth Motion to Compel. By this Motion, OPC seeks to compel answers to its Sixth and Seventh Sets of Interrogatories and Fifth and Sixth Requests for Production of Documents to UIF. OPC also asks that UIF be required to compel a response to its Document Request No. 38, from its Second Request for Production of Documents.

On January 31, 2003, OPC filed the Citizens Fifth Motion to Compel answers to its Interrogatories Nos. 103-110 and 112-116, from its Eighth Set of Interrogatories to UIF. No response has been filed to the Motion.

RULINGS

In its Motions to Compel, OPC states that UIF has failed to provide adequate responses to the interrogatories and document requests that are the subjects of the Motions, and that with respect to certain of the discovery requests at issue, UIF has failed to provide any response, nor has the utility filed objections thereto. Pursuant to Order No. PSC-02-1495-PCO-WS, issued October 31, 2002, establishing procedure in this docket, an objection to or request for clarification of a discovery request shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes. Otherwise, answers to discovery requests are due within

Interrogatories. As noted in the Citizens' Fifth Motion to Compel, as a result of discussions between the parties, no further information will be sought by OPC with respect to these two interrogatories.

30 days after service of the requests, pursuant to the Florida Rules of Civil Procedure.

It is noted that since the filing of the Citizens' Motions to Compel, UIF has provided supplemental answers to certain of the discovery requests at issue. Nevertheless, answers to the still outstanding discovery requests are overdue. OPC asks that the outstanding interrogatories be specifically answered and that the outstanding document requests be provided on an expedited basis. The Citizens' First, Second, Third, Fourth, and Fifth Motions to Compel are granted. UIF shall provide all outstanding answers to these discovery requests within ten days of the date of this Order. UIF shall take note that referring OPC to its general ledger does not constitute a specific response to a specific request for information. Nor does "we are still working on this" comply with the 30-day time frame within which discovery requests are to be answered. As OPC points out, intervenor testimony is due on March 31, 2003. The delay in receiving this information is already compromising OPC's ability to prepare its case. Further delays in responding to the discovery requests will not be tolerated.

With regard to UIF's responses to the Citizens' First and Second Motions to Compel, as OPC points out, these responses were untimely filed. OPC's Motion to Strike Untimely Pleadings is therefore granted.

Based on the foregoing, it is

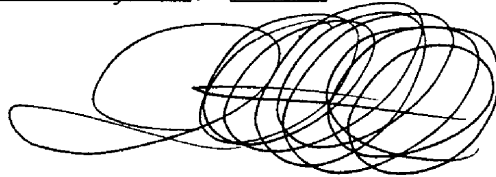
ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the Citizens' First, Second, Third, Fourth, and Fifth Motions to Compel are granted. It is further

ORDERED that Utilities, Inc. of Florida shall specifically answer all discovery requests which are still outstanding within ten days of the date of this Order. It is further

ORDERED that the Citizens' Motion to Strike Untimely Pleadings is granted.

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 12th day of February, 2003.



FO BAEZ

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

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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.