

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida  
Public Utilities Company.

DOCKET NO. 080366-GU  
ORDER NO. PSC-09-0182-PCO-GU  
ISSUED: March 27, 2009

ORDER DENYING FLORIDA PUBLIC UTILITIES COMPANY'S OBJECTIONS  
AND MOTION FOR PROTECTIVE ORDER

On December 17, 2008, Florida Public Utilities Company (FPUC) filed its Petition for Rate Increase (Petition) requesting an increase in rates and charges for natural gas service. FPUC requested that the Petition be processed using the Proposed Agency Action (PAA) procedures set forth in Section 366.06(4), Florida Statutes (F.S.) and Rule 25-22.029, Florida Administrative Code (F.A.C.).

On December 30, 2008, the Office of Public Counsel (OPC) filed a Notice of Intervention, and the Commission acknowledged OPC's intervention by Order No. PSC-09-0010-PCO-GU, issued January 5, 2009. On March 10, 2009, OPC served its First Set of Interrogatories (2-4) and First Request for Production of Documents (1-8) – hereinafter First Round of Discovery.

On March 16, 2009, FPUC filed its Objections and Motion for Protective Order (Motion) in opposition to OPC's First Round of Discovery. In its Motion, FPUC objected to the discovery filed by OPC as being premature and requested that the Commission enter an appropriate protective order that discovery could not be had. FPUC alleges that discovery is not appropriate under the PAA process until a PAA Order is issued and an appropriate objection is filed. Citing Section 350.0611(1), F.S., and Rule 28-106.206 Discovery, F.A.C., FPUC argues that the proceeding will not have "commenced" until a PAA Order is issued and an objection has been filed.

Moreover, FPUC alleges that:

To allow the OPC to conduct discovery at this point in the PAA process is unnecessarily burdensome and serves no purpose and is arguably contrary to the purpose of the PAA. The Commission has not taken any action that would define the issues or disposition of those issues and discovery by OPC adds nothing to that process. The OPC will have ample opportunity to conduct discovery on issues if they protest the PAA order. The granting of a protective order does not deprive OPC of any rights or opportunities they have as a party.

Based on the foregoing, FPUC requests that the Commission issue a protective order that discovery not be had at this time and allow the PAA process to proceed as designed and

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intended. FPUC further requests that the time for responding to the attempted discovery be stayed pending resolution of this objection and request.

OPC filed its Response to FPUC's Motion on March 17, 2009. In that Response, OPC noted that FPUC was requesting a \$10 million annual increase and was requesting \$850,000 in rate case expense just through the PAA process. OPC argues that it has every right to represent the customers before the Commission votes to issue a PAA Order and that:

Administrative efficiency and the Commissioners time would likely be better served if these issues were explored in discovery and then shared with the Company and staff in an informal setting rather than airing them out laboriously at the PAA Agenda Conference.

OPC further states that it has never been the policy of the Commission to forestall discovery until after the Commission votes on the PAA Order. OPC therefore requests that the Commission require FPUC to timely respond to OPC's discovery and that there be no tolling of time during the pendency of FPUC's Motion.

The commencement of the proceeding in the instant case began with the FPUC filing its petition for a rate increase. Review of Section 350.0611(1), F.S. and Rule 28-106.206, F.A.C., indicates that there is no prohibition against proceeding with discovery prior to issuance of the PAA Order. Furthermore, this decision is consistent with prior Commission decisions.<sup>1</sup> Accordingly, the FPUC motion is denied and FPUC shall respond to all OPC discovery to which it does not otherwise object in a timely manner. Based on the above, FPUC shall respond to the First Set of OPC discovery issued in this docket no later than April 14, 2009.

In consideration of the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Objections and Motion for Protective Order filed by Florida Public Utilities Company is denied as requested by the Office of the Public Counsel. It is further

ORDERED that the Office of Public Counsel's request that there be no tolling of the time to respond to discovery is granted as set forth in the body of this Order. It is further

ORDERED that Florida Public Utilities Company shall respond to OPC's First Round of Discovery by no later than April 14, 2009.

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<sup>1</sup> See, Order No. PSC-04-0806-PCO-TP, issued August 19, 2004, in Docket No. 040353-TP, In re: Petition to review and cancel, or in the alternative immediately suspend and postpone BellSouth Telecommunications, Inc.'s Preferred Pack Plan Tariffs, by Supra Telecommunications and Information Systems, Inc.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 27th day of March, 2009.



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NATHAN A. SKOP  
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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; or (2) 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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.