

GATLIN, WOODS & CARLSON
Attorneys at Law
a partnership including a professional association

The Mahan Station
1709 D Mahan Drive
Tallahassee, Florida 32308

B. KENNETH GATLIN, P.A.
THOMAS F. WOODS
JOHN D. CARLSON
WAYNE L. SCHIEFELBEIN

TELEPHONE (904) 877-7191
TELECOMMER (904) 877-9031

December 18, 1996

HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850


RE: Docket No. 960529-WS
Application of GULF UTILITY COMPANY for
an increase in Wastewater Rates, approval of a decrease in
Water Rates and approval of Service Availability Charges in Lee
County, Florida

Dear Ms. Bayo:

Enclosed for filing are an original and fifteen copies of Gulf Utility Company's Objections to Citizens' Fourth Set of Interrogatories to Gulf Utility Company, in reference to the above docket.

Please acknowledge receipt of the foregoing by stamping the enclosed extra copy of this letter and return same to my attention.

Sincerely,


Kathryn G. W. Cowdery

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____ KGWC/met
- CTR _____ Enclosures
- EAG _____ cc: Maggie O'Sullivan, Esq.
- LEG T _____ Division of Legal Services
- LIN 5 _____ Stephen C. Reilly, Office of Public Counsel
- OFC _____
- RCH _____
- SEC T _____
- WAS _____
- OTH _____

DOCUMENT NUMBER DATE

13462 DEC 18 96

FILED IN 13462

ORIGINAL
FILE COPY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of GULF UTILITY)
COMPANY for an increase in Wastewater)
Rates, approval of a decrease in Water)
Rates and approval of Service Availability)
Charges in Lee County, Florida.)

Docket No. 960329-WS

Filed: December 18, 1996

**GULF UTILITY COMPANY'S OBJECTIONS TO CITIZENS'
FOURTH SET OF INTERROGATORIES TO GULF UTILITY COMPANY**

Gulf Utility Company (Gulf), pursuant to the Order Establishing Procedure in this case, hereby files its objections to Citizens' Fourth Set of Interrogatories to Gulf Utility Company, and states:

1. The Order Establishing Procedure, Order No. PSC-96-1178-PCO-WS, issued on September 20, 1996, states:

Unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 200, and requests for production of documents, including all subparts, shall be limited to 100.

Gulf objects to Citizens' Fourth Set of Interrogatories as it exceeds the 200 limit of interrogatories set by the Order Establishing Procedure. Citizens' Fourth Set of Interrogatories is burdensome, oppressive, and unreasonable.

2. Rule 25-22.034, F.A.C., states that discovery in proceedings determining substantial interests may be obtained through the means and in the manner provided by Rule 1.280 through 1.400, Fla. R. Civ. Procedure. Rule 1.340, Interrogatories to Parties, states:

(a)The interrogatories shall not exceed 30, including all subparts, unless the court permits a larger number on motion and notice for good cause.

The Commission routinely deviates from Rule 25-22.034, F.A.C., in its orders establishing procedure by setting a limit of 100 interrogatories. In this docket, the Prehearing Officer increased this limit

DOCUMENT NUMBER-DATE
13462 DEC 18 1996
FILED IN 13462-WS
OFFICE OF THE CLERK OF THE COMMISSION

to 200. The Prehearing Officer has advised the parties of the expected boundaries of discovery, to be adhered to by the parties unless specifically modified.

3. In determining how many interrogatories, including subparts, have actually been propounded, the test is how many separate answers are required by the discovery. See, Otis Elevator Company, Inc. v. Garber, 820 P.2d 1072, 1073, fn. 1 (Alaska 1991) (“we interpret 26(a)’s limitation on interrogatories to mean that no more than thirty separate answers may be required without court approval”). Florida Appellate Courts do not appear to have specifically addressed this issue. The Supreme Court of Rhode Island in Eleazer v. Ted Reed Thermal, Inc., 576 A.2d 1217, 1220 (R.I. 1990), quoted from Rhode Island Civil Practice, by a professor Kent:

Subsidiary questions, arranged as part of a purported single question, each constitute a separate question for purposes of this rule, and the bar has been alerted that the court looks with disfavor upon attempts to disguise the number of questions by inclusion of multiple questions in a single numbered question.

It is not always clear when an interrogatory is asking for more than one answer, but using any standard of reasonableness, OPC’s Fourth Set of Interrogatories exceed the 200 item boundary to the range of discovery set by the Order Establishing Procedure.

4. Set forth below is a chart containing Gulf’s analysis of the number of interrogatories propounded on Gulf by OPC.

INTERROGATORIES

<u>Set No.</u>	<u>Numbered parts</u>	<u>including explicitly lettered subparts</u>	<u>estimate including unidentified subparts</u>
1	33	42	131
2	19	21	60

3	7	9	15
4	<u>2</u>	<u>3</u>	<u>14</u>
TOTALS	61	75	220


Attached hereto are copies of the OPC's four sets of interrogatories with the 220 interrogatories consecutively numbered (Attachment A hereto).

5. It is OPC's obligation to formulate proper discovery within the confines of the Order Establishing Procedure. It is OPC's obligation to file a motion requesting modification of the discovery limits set in the Order Establishing Procedure, if it wishes to have that order modified. OPC has not met its obligation of properly propounding discovery in this case. The number of interrogatories propounded by OPC is unduly burdensome and oppressive.

WHEREFORE, Gulf respectfully requests that the Prehearing Officer sustain Gulf's Objections to Citizens' Fourth Set of Interrogatories to Gulf as exceeding the limit of 200 interrogatories set in the Order Establishing Procedure.

DATED this 18th day of December, 1996.

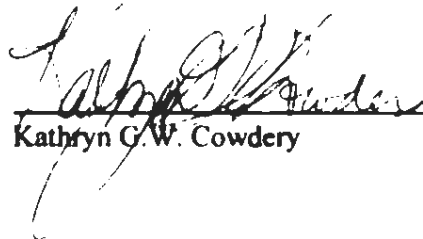
Respectfully submitted,


 Kathryn G.W. Cowdery
 c/o Gatlin, Woods & Carlson
 1709-D Mahan Drive
 Tallahassee, Florida 32308
 (904) 877-7191

Attorneys for
 GULF UTILITY COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Ms. Maggie O'Sullivan, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, Florida 32399-0850, and to Mr. Stephen C. Reilly, Esq., Office of Public Counsel, 111 W. Madison Street, Room 812, Tallahassee, Florida 32399-1400, on this 12th day of December, 1996.



Kathryn G.W. Cowdery