

MEMORANDUM

January 14, 1997

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RECORDS REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (O'SULLIVAN) *MS*

RE: DOCKET NO. 960329-WS - Application for increase in rates and service availability charges in Lee County by Gulf Utility Company

DOCKET NO. 960234-WS - Investigation of rates of Gulf Utility Company in Lee County for possible overearnings

PSC-97-0054-PCO

Attached is an Order Overruling Objection, to be issued in the above-referenced docket. (Number of pages in Order - 4)

MEO/dp

Attachment

cc: Division of Water and Wastewater (Willis, Crouch, Fuchs, Galloway, Merchant, Rendell, Webb, Xanders)

I: 960329-D.MO

2 100.P.C

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Investigation of Rates of Gulf) DOCKET NO. 960234-WS
Utility Company in Lee County)
for Possible Overearnings)
_____)

In Re: Application for increase) DOCKET NO. 960329-WS
in rates and service) ORDER NO. PSC-97-0054-PCO-WS
availability charges in Lee) ISSUED: January 15, 1997
County by Gulf Utility Company.)
_____)

ORDER OVERRULING OBJECTION

On August 23, 1996, Gulf Utility Company (Gulf or the utility) completed the minimum filing requirements for a general rate increase and that date was established as the official filing date for this proceeding. By Order No. PSC-96-1344-PCO-WS, issued November 14, 1996, the Commission acknowledged the notice of intervention filed by the Office of Public Counsel (OPC). This matter is currently set for an administrative hearing.

The Order Establishing Procedure, Order No. PSC-96-1178-PCO-WS, issued September 20, 1996, set forth the following limitation upon written discovery:

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

On December 18, 1996, Gulf filed an objection to OPC's Fourth Set of Interrogatories which were propounded on the utility on December 10, 1996. Gulf contends that OPC has exceeded the limit of 200 interrogatories established by Order No. PSC-96-1178-PCO-WS and that its discovery is burdensome, oppressive and unreasonable. OPC has propounded a total of 75 numbered parts and subparts. However, Gulf calculated the number of identifiable parts and subparts, and estimated what it considered to be unidentified and unnumbered subparts. Gulf provided an attachment indicating a count of 220 interrogatory questions. Gulf contends that OPC failed to properly formulate its discovery, and did not request a modification of the discovery limits.

In its December 27, 1996, response, OPC contends that Gulf's calculations are subjective and overstate the number of interrogatory questions. According to OPC, many of the instances where Gulf counted multiple subparts were actual clarifications of one question. Furthermore, OPC asserts that Gulf has not cited Florida case law to support its interpretation. OPC states that it

DOCUMENT NUMBER-DATE

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does not intend to file any additional discovery requests, outside of pending late-filed deposition exhibits. OPC requests that the utility provide responses to the disputed discovery by January 9, 1997.

A common sense approach recognizes that while some items of information are clearly severable, not every element of a question must be broken down into a subpart. As noted by the utility in its objection, it is not always an easy task to ascertain whether a question contains subparts. There are several instances where OPC's interrogatory questions contain more than one subpart. For example, Interrogatory No. 1, involving legal expenses, addresses numerous, severable elements such as the status of litigation, the identity of the parties, expenses and cost justification. However, in other instances, Gulf has counted too many individual subsections. For example, Interrogatory No. 41 requested an estimate of time spent by company officers on utility, development, and non-utility matters for a two year period. Gulf counted five subsections in that question.

In a rate proceeding involving numerous issues, witnesses and documentation, legitimate discovery requests may reach several hundred. While in some instances the interrogatories propounded by OPC contain unnumbered subparts, it does not appear that OPC has exceeded the limit of 200. The discovery requests are not excessive, and OPC has stated that it will not propound any further discovery. Moreover, Gulf has not demonstrated any other grounds as to why the discovery requests are burdensome, oppressive, or unreasonable.

In consideration of the parties' positions, and applying a standard of reasonableness in reviewing the discovery requests, Gulf's objection to OPC's Fourth Set of Interrogatories is overruled. Gulf shall provide responses to the outstanding discovery requests by the close of business on Friday, January 17, 1997.

Based upon the foregoing, it is

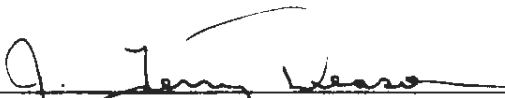
ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Gulf Utility Company's objection to the Fourth Set of Interrogatories propounded by the Office of Public Counsel is hereby overruled. It is further

ORDERED that Gulf Utility Company shall provide responses to the Fourth Set of Interrogatories propounded by the Office of Public Counsel as soon as possible, but not later than by the close of business on Friday, January 17, 1997.

ORDER NO.: PSC-97-0054-PCO-WS
DOCKETS NOS. 960329-WS, 960234-WS
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ORDERED that Gulf Utility Company shall provide responses to the Fourth Set of Interrogatories propounded by the Office of Public Counsel as soon as possible, but not later than by the close of business on Friday, January 17, 1997.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 15th day of January, 1997.



J. TERRY DEASON, Commissioner and
Prehearing Officer

(S E A L)

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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.

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