

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. For Orange-Osceola Utilities, Inc. In Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.

DOCKET NO. 950495-WS
FILED:

NOTICE OF WITHDRAWAL OF INTERROGATORY NO. 1 AND REQUEST FOR PRODUCTION NO. 1 ON REMAND AND RESPONSE OF STAFF TO MOTION FOR PROTECTIVE ORDER OF FLORIDA WATER SERVICES CORPORATION

The staff of the Florida Public Service Commission, by and through its undersigned attorney, responds to the Motion for Protective Order filed by Florida Water Services Corporation on March 1, 1999, as follows.

On February 19, 1999, Commission staff served its First Set of Interrogatories and Request for Production of Documents on Remand on Florida Water Services Corporation (Florida Water or utility). Also, on February 23, 1999, the Office of Public Counsel (OPC) filed its First Request for Production of Documents. In its Request No. 1, OPC requested that it be provided all documents requested by staff. On March 1, 1999, Florida Water filed its Objections to Staff's First Set of Interrogatories and First Request for Production of Documents on Remand and Motion for Protective Order (Motion).

ACB _____
AF _____
AF _____ In its Motion, Florida Water objects to staff's
CA _____ Interrogatories Nos. 1 and 4, and Request for Production No. 1.
CMB _____ Upon review of those discovery requests, staff has now decided to
CTR _____ withdraw Interrogatory No. 1 and Request for Production No. 1.
EAG _____ Further, OPC is aware that staff is taking this action and does not
LEG _____ seek to have the utility separately provide it with the documents
LW _____ required in staff's original Request for Production No. 1.
OPC _____ Therefore, the utility's Motion is moot on these discovery
RC _____ requests.
SEC _____
WAS _____
OTR _____

DOCUMENT NUMBER-DATE

03208 MAR 12 99

FPSC-RECORDS/REPORTING

However, staff has not withdrawn its request on Interrogatory No. 4. Staff's Interrogatory No. 4 states:

Please provide schedules of rate base, net operating income and capital structure reflecting the achieved water and wastewater rates of return earned by the utility for 1997 and 1998. These should be on a total water and total wastewater basis. Consistent with Section 367.082, Florida Statutes, please incorporate the regulatory adjustments and methodologies approved by the Commission in this docket and describe all adjustments to the per book amounts. For those issues that remain in dispute, please disclose the method used. Do not include additional rate case expense above the amount approved in the Final Order in this docket. If any major changes in plant, such as purchase or sale of assets, or any other operational changes that would impact earnings, have occurred that were not included in the Final Order, please disclose those changes and provide an explanation as to why those adjustments should be included or excluded in the ratemaking equation.

The utility states that this request is outside the scope of the Southern States Utils., Inc. v. FPSC, 714 So. 2d 1046 (Fla. 1st DCA 1998) (Southern States) remand decision, which is limited to used and useful determinations for four wastewater treatment plants, and water transmission and wastewater collection lines based on the 1996 test year. The utility further argues that information concerning rate base, net operating income and capital structure reflecting achieved rate of return earned by Florida Water for 1997 and 1998 are both outside of the test year and outside the scope of the remand. The utility also states that information concerning any major changes in plant or any operational changes that were not included in the final order were also outside the scope of the limited issues on remand in this proceeding.

Staff notes that with the protest of the proposed agency action portion of Order No. PSC-99-0093-FOF-WS regarding surcharges, there is now an issue as to what is the appropriate action that should be taken in regards to surcharges. Staff believes that the information requested in Interrogatory No. 4 is reasonably calculated to lead to discovery of admissible evidence on the issue of what is the appropriate action that should be taken with regard to surcharges. See Calderbank v. Cazares, 435 So. 2d

377 (Fla. 5th DCA 1983)¹; and Rule 1.280(b)(1), Florida Rules of Civil Procedure. Also, staff believes that the information requested is readily available in the format requested. Therefore, staff requests that Florida Water's Motion for a Protective Order on Interrogatory No. 4 be denied.

Wherefore, staff requests that the Motion of Florida Water Services Corporation for a Protective Order on Interrogatory No. 4 on Remand be denied. Further, staff gives notice that it has withdrawn Interrogatory No. 1 and Request for Production No. 1 on Remand and the utility's request for a protective order on those discovery requests is moot.

Respectfully submitted, this 12th day of March, 1999.



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¹ The Court held in that case where it was not "apparent" how the information sought was "reasonably calculated" to lead to admissible evidence on the issues in the pending litigation, then the order compelling evidence was quashed.

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DOCKET NO. 950495-WS

FILED: MARCH 12, 1999

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the Notice of Withdrawal of Interrogatory No. 1 and Request for Production No. 1 on Remand and Response of Staff to Motion for Protective Order of Florida Water Services Corporation, has been delivered by regular U.S. Mail to **Kenneth A. Hoffman, Esquire**, Rutledge, Ecenia, Underwood, Purnell, & Hoffman, P.A., P.O. Box 551, Tallahassee, Florida, 32302-0551, and that a true and correct copy thereof has been furnished to the following, by U.S. Mail, this 12th day of March, 1999:

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