

MESSER CAPARELLO & SELF, P.A.

Attorneys At Law

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November 16, 2007

BY HAND DELIVERY

Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

RECEIVED-FPSC
07 NOV 16 PM 2:36
COMMISSION
CLERK

Re: Docket No. 070304-EI

Dear Ms. Cole:

Enclosed for filing on behalf of Florida Public Utilities Company are an original and fifteen copies of Florida Public Utilities Company's Response to Citizens' Motion to Compel in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

Norman H. Horton, Jr.

- CMP _____
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- ECR _____
- GCL 2 _____
- OPC _____
- RCA 1 _____
- SCR _____
- SGA _____
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NHH/amb
Enclosure
cc: Ms. Cheryl M. Martin
Parties of Record

DOCUMENT NUMBER - DATE
10345 NOV 16 06
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by Florida) Docket No. 070304-EI
Public Utilities Company) Date Filed: November 16, 2007
_____)

**FLORIDA PUBLIC UTILITIES COMPANY’S RESPONSE TO
CITIZENS’ MOTION TO COMPEL**

COMES NOW Florida Public Utilities Company (“the Company” or “FPUC”), and files this Response to the Motion to Compel filed by Citizens on November 9, 2007. As it Response, FPUC would state:

1. On November 8, 2007, FPUC timely filed responses and objections to Citizens Second Request for Production of Documents. Among the requests to which an objection was filed were Items 47, 48, 49, 52, 53, 62, 63, 64, 65 and 66. On November 9, 2007, the Citizens filed a Motion to Compel as to these items.

2. Each of the enumerated Requests sought production of workpapers with “. . . data and workpapers in both paper and electronic (Microsoft Excel Worksheet) forms.” As to the Excel worksheets the request wanted “. . . all formulas embedded in the worksheet.”

3. FPUC entered the following objection to each of these requests.

Document Requests 47, 48, 49, 52, 53, 62, 63, 64, 65, and 66. FPUC incorporates objections 1, 7, 9 and 10. Additionally as to 62, FPUC would incorporate objection 3. These requests seek documents in both paper and electronic format and to the extent documents are produced, they will be available as kept in normal business. The requests seek production of workpapers with “all formulas embedded in the worksheet.” Such formulas are not the property of the Company but are developed by consultants engaged by the Company and are confidential, proprietary business information constituting trade secrets to the consultant. The release of such formulas to other consultants in any format would harm the consultant and deprive him of his property. The Company would make available for review the worksheets, subject to appropriate confidentiality arrangements,

without the embedded formulas but would also provide an explanation of the worksheets.

The objections which were incorporated were as follows:

7. FPUC objects to each and every Request to the extent that it imposes a burden of discovery not required in the Rules of Civil Procedure.

9. FPUC objects to each and every Request to the extent it requests documents and/or information not in existence or in a format other than as it is normally kept for business purposes. FPUC also objects to each and every request to the extent it requests documents in multiple formats.

10. FPUC objects to each and every Request to the extent copies are to be made available for review in other than the offices of the Company. Such a request is unduly burdensome and expensive. Without waiving this objection, FPUC will provide copies to the extent it can be done efficiently and will make available other documents at its offices for review and copying.

The Company also incorporated the following objection as to Request No. 62

3. FPUC objects to each and every Request to the extent that it is vague, overly broad, or contains undefined terms susceptible to multiple meanings.

4. The Motion to Compel raises essentially two points, to-wit: the Company is required to produce the documents in both formats and is required to provide the Excel version with embedded formulas.

5. As to the first point, the request is for “data and workpapers in both paper and electronic . . . format” (emphasis supplied). Contrary to the argument of the Citizens, the request is to produce the same document in two formats which is an obligation beyond the requirements of the Rules of Civil Procedure.

Rule 1.350(b), Florida Rules of Civil Procedure requires in part:

“When producing documents, the producing party shall either produce them as they are kept in the usual course of business or shall identify them to correspond with the categories in the request.”

The obligation is to produce documents as they are kept in the usual course of business, which FPUC has said they would provide subject to confidentiality and trade secret issues, and there is no requirement that the Company create documents or produce them in multiple formats. By specifying that the documents be produced in “both” forms, Citizens have requested the same item. They may want something else but they did not request something else.

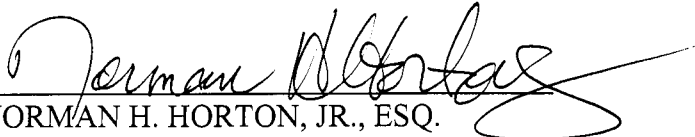
6. Citizens also argues that they need the embedded formulas to test that the consultants results are able to be duplicated and allows Citizens to ensure that the input data is correct and no data was omitted. (Motion, par. 4). The formulas at issue were developed by consultants engaged by the Company for this proceeding and are unique to these consultants. Such formulas constitute trade secrets as defined by Section 90.506, Florida Statutes and the release of these formulas would deprive the consultant of his property.

7. The Company has responded to the several requests by stating that the worksheets would be produced for review, subject to appropriate confidentiality agreements without the “embedded formulas.” It is the understanding of the Company that “embedded formulas” means that the worksheets would be produced in an “interactive mode” as opposed to a “read only” format. The Company has stated that the worksheets and formulas would be provided to citizens but that the formulas would be “locked out” or “read only” rather than “embedded.” This would allow Citizens and its consultants to review the data and formulas and they could test the data and formulas but would not be able to use the Company’s software/electronic schedule to do so. The Citizens want more than the formulas, they want them in a preferred format which enables them to utilize the work performed by the consultant for the Company which is beyond that which is required by the Rules.

8. Notwithstanding the position with respect to providing the Excel worksheets with the formulas embedded, and without waiving or conceding that position, in an effort to facilitate this process the Company will produce the Excel worksheets with the formulas embedded.

Respectfully submitted,

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NORMAN H. HORTON, JR., ESQ.

Attorneys for Florida Public Utilities Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served by Hand Delivery this 16th day of November, 2007 upon the following:

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NORMAN H. HORTON, JR.