

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

DOCKET NO. 070293-SU
ORDER NO. PSC-07-0786-PCO-SU
ISSUED: September 27, 2007

FIRST ORDER REVISING ORDER ESTABLISHING PROCEDURE;
ORDER GRANTING IN PART AND DENYING IN PART OPC'S MOTION TO PERMIT
ADDITIONAL INTERROGATORIES AND PRODUCTION OF DOCUMENTS;
AND
ORDER GRANTING IN PART AND DENYING IN PART THE UTILITY'S MOTION FOR
PROTECTIVE ORDER

Order No. PSC-07-0729-PCO-SU (the Order Establishing Procedure), issued on September 11, 2007, limits the number of interrogatories and requests for production of documents (PODs) to 100 each, including all subparts. Alleging that this was an inadequate number of discovery requests for this particular rate case, the Office of Public Counsel (OPC) filed on September 17, 2007, its Motion to Permit Additional Interrogatories and Production of Documents (Motion). In its Motion, OPC requests that the total number of interrogatories authorized by the Order Establishing Procedure be increased to 400, and the total number of PODs be increased to 200.

As justification for the increase, OPC states that the utility has not had a rate case since 1985; the utility is seeking a significant rate increase in this docket based primarily on three major construction projects; operating costs will increase because the utility is going to advanced wastewater treatment; there are significant pro forma additions; the matter involves affiliated companies; and there may have been misdealings between the utility and a Monroe County Commissioner. OPC further alleges that additional discovery requests will serve the Parties, the Commission, and Staff, because it may shorten or even eliminate the need for depositions and help to better define and sharpen the issues in the case, which can foster more focused prefiled testimony, prehearing statements, and a shorter, more efficient hearing.

Finally, OPC states that, in its initial discovery requests served on the utility, there were 178 interrogatories, including subparts, and 70 PODs. OPC estimates a need for a maximum of 400 interrogatories and 200 PODs to permit adequate follow-up discovery.

On September 24, 2007, the utility filed its Response to Citizen's Motion to Permit Additional Interrogatories and Production of Documents and Motion for Protective Order. The Motion for Protective Order and the utility's response are discussed below.

DOCUMENT NUMBER-DATE

08871 SEP 27 07

FPSC-COMMISSION CLERK

1. Utility's Motion for Protective Order

The utility states that even though the Order Establishing Procedure limited the total number of interrogatories to 100, including all subparts, OPC admits that it served 178 interrogatories, including subparts. The utility alleges that the tendering of this number of interrogatories is in clear violation of the Order Establishing Procedure and, therefore, constitutes unauthorized discovery. The utility states that:

Because the 178 interrogatories constitute unauthorized discovery in violation of the Order Establishing Procedure, a burden is placed upon KW which is unfair, unauthorized and improper (to review all 178 such interrogatories, including subparts, even before the Prehearing Officer can review OPC's request to expand the number of allowed interrogatories as discussed elsewhere herein). Under the Order Establishing Procedure, the parties have ten days to review discovery for clarification or objection, and 30 days to respond to discovery. OPC's actions, in contrast to the directives of that Order, effectively deprive KW of that opportunity, by attempting to force it to deal with a number of interrogatories which are unauthorized, improper and contrary to that Order.

Because OPC's interrogatories constitute improper and unauthorized discovery, the utility states that these

interrogatories should not be considered served upon KW until such time as the Prehearing Officer rules on OPC's motion. Any other result places KW in a position where it does not know what discovery it should be reviewing, what experts it should have looking at which interrogatory, or which interrogatories it has the burden to object to, all because KW cannot know how the Prehearing Officer will rule.

2. Utility's Response to OPC's Motion

In its response, the utility notes that the Florida Rules of Civil Procedure provide that interrogatories shall not exceed 30 (Rule 1.340(a)) and that objections to interrogatories and requests to produce shall be made within 30 days of service of the same. In this case, as in most cases before the Commission, the utility notes that the number of allowed interrogatories and PODs has been increased to 100, and that the time for requesting clarification or filing specific objections has been shortened to require such requests/objections be made within 10 days of service of the discovery request. The utility argues that the most complex civil cases in state and federal court are subject to a limit of 30 interrogatories, and that the expansion to 100 is based on the Commission's experience that, in some cases, discovery above and beyond that contemplated by the Uniform Rules of Procedure in Florida may be necessary and appropriate. The utility argues that OPC's request to increase the interrogatories to 400 and PODs to 200 has not been justified for a utility this size. The utility further argues that OPC's motion will increase rate case expense, "will cause the needless expenditures of time and money on behalf of KW, and will (most importantly) lift from OPC's shoulders the burden of only tendering discovery which

is carefully thought out, specifically tailored for needed information, and appropriately designed to further the true purpose of discovery in this type of administrative proceeding.”

Based on the above, the utility states that OPC’s request for additional interrogatories and PODs should be denied, and that its Motion for Protective Order should be granted such that the time for responding to the interrogatories will not begin to run until the issuance of the Prehearing Officer’s Order.

Ruling

Having reviewed OPC’s Motion and the utility’s response, I find that an increase in the number of interrogatories and PODs is warranted due to the complexity of this case, the involvement of related parties, the number of projects, and the time since the utility’s last rate case. However, I find the request for 400 interrogatories and 200 PODs to be excessive.¹ Therefore, OPC’s Motion to Permit Additional Interrogatories and PODs shall be granted in part and denied in part. All parties shall be allowed to serve 300 interrogatories and 150 PODs, including all subparts.

Because OPC is limited to 300 interrogatories and 150 PODs, it may wish to withdraw some of its initial interrogatories and PODs. Pending OPC’s advising the utility which of its interrogatories and PODs it still wishes a response, the utility shall not have to respond to any of the interrogatories or PODs. Thus, the utility’s Motion for Protective Order is granted in part and denied in part. Upon being advised by OPC on which interrogatories and PODs OPC still desires responses, the utility shall file its objections, if any, within 10 days, and its response to those interrogatories to which it does not object within 25 days, and to those PODs to which it does not object within 21 days of being so advised.

Based upon the foregoing, it is

ORDERED by Commissioner Nancy Argenziano, as Prehearing Officer, that the Office of Public Counsel’s Motion to Permit Additional Interrogatories and Production of Documents is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that the Motion for Protective Order filed by KW Resort Utilities, Corp., is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that the number of permitted interrogatories and production of documents is increased from 100 to 300 and from 100 to 150, respectively, as set forth in the body of this Order. It is further

¹ By Order No. PSC-07-0219-PCO-WS, issued March 9, 2007, in Docket No. 060368-WS, In re: Application for increase in water and wastewater rates in Alachua, Brevard, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc., this Commission allowed 750 interrogatories and 750 PODs for a utility with approximately 80 systems (56 water and 24 wastewater) and approximately 22,000 customers in 15 counties. In contrast, KW Resort is a wastewater only utility with approximately 1,500 customers in a single county.

ORDERED that all other aspects of Order No. PSC-07-0729-PCO-SU are hereby reaffirmed.

By ORDER of Commissioner Nancy Argenziano, as Prehearing Officer, this 27th day of September, 2007.



NANCY ARGENZIANO
Commissioner and Prehearing Officer

(S E A L)

RRJ

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 25-22.060, 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.