

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-07-0901-PCO-SU  
| ISSUED: November 8, 2007

THIRD ORDER REVISING ORDER ESTABLISHING PROCEDURE;

AND

ORDER GRANTING IN PART AND DENYING IN PART THE OFFICE OF PUBLIC COUNSEL'S MOTION TO COMPEL AND REQUEST FOR EXTENSION OF TIME TO FILE PREFILED DIRECT TESTIMONY

By Order No. PSC-07-0786-PCO-SU, issued on September 27, 2007, the Commission granted in part and denied in part the Office of Public Counsel's (OPC) Motion to Permit Additional Interrogatories and Production of Documents and granted in part and denied in part K W Resort Utilities Corp.'s (KW Resort or utility) Motion for Protective Order. Pursuant to that Order, OPC was limited to 300 interrogatories and 150 requests for production of documents (PODs). Also, because its full request was not granted,<sup>1</sup> OPC was directed to advise the utility which of its first interrogatories and PODs would be withdrawn, and the utility was given 25 days from OPC's notice to the utility to respond to those interrogatories and PODs that were not withdrawn.

OPC advised the utility of the interrogatories and PODs for which it was still seeking discovery on September 27, 2007, and that made the utility's response to those interrogatories and PODs to which it did not object due 25 days from that date, i.e., October 22, 2007. However, the utility and OPC reached an agreement whereby the utility would be granted a four-day extension to October 26, 2007, to file its responses to the first interrogatories and PODs, and all parties would be given an additional four days in which to prefile their testimony. This agreement was approved by Order No. PSC-07-0851-PCO-SU, issued October 25, 2007. Pursuant to approval of that agreement, the controlling dates for the filing of all subsequent prefiled testimony and exhibits was extended by four days.

On October 26, 2007, the utility filed its Response to Citizen's Amended First Request for Production of Documents (Nos. 1-62). The utility responded that "the documents will be produced to the extent they exist."

On October 31, 2007, OPC filed its Motion to Compel KW Resort Utilities Corp. to Respond to OPC's First Set of Production of Documents and Request for Extension of Time to File Prefiled Direct Testimony. On November 1, 2007, KW Resort filed its Response to Citizen's Motion to Compel and Request for Extension of Time.

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<sup>1</sup> OPC had requested 400 interrogatories and 200 PODs.

DOCUMENT NUMBER-DATE

10182 NOV-8 5

FPSC-COMMISSION CLERK

Motion to Compel

In OPC's Motion to Compel, OPC requests that the utility be immediately made to respond to its first set of PODs, and that if a document does not exist, KW Resort should be ordered to so state. After telephone conversations with our staff and OPC, the utility agreed that, instead of making the documents available at the utility's Key West offices for inspection and copying as it first contemplated, it would have all the documents (several boxes) shipped to Tallahassee. Further, at OPC's request, the utility copied every document and gave copies to OPC and our staff on November 6, 2007. Therefore, that part of OPC's Motion to Compel is moot. However, the utility should specifically indicate which documents do not exist in response to OPC's request.

Request for Extension of Time to File Prefiled Testimony

OPC's Argument

OPC states that it should have had the documents on October 26, 2007, but did not obtain the documents until November 6, 2007. Based on this delay, OPC requests a day-for-day extension of the time for filing its prefiled testimony (and staff's testimony), without any extension to the filing date for the utility's rebuttal testimony.

Utility's Response

In response to OPC's motion, the utility cites Rule 1.350(b), Florida Rules of Civil Procedure, and argues that a response only has to be made within 30 days, and that this rule gives the utility the option to produce the documents "as they are kept in the usual course of business." The utility argues that if OPC had merely contacted the utility as required by Rule 28-106.204(3), Florida Administrative Code,<sup>2</sup> before it filed its Motion to Compel, then "it would have learned that the documents were available for inspection." The utility argues that it had originally intended to produce the documents as they exist in the ordinary course of business in Key West, and that OPC had not requested inspection of the documents. Therefore, "no mutually available time for the same had been arrived at." In an effort to be courteous to OPC, counsel for the utility agreed on the very next day after OPC's Motion to Compel to have the documents shipped to Tallahassee. Based on the above facts, the utility argues that to give OPC additional time to prefile its testimony with no additional time for the utility to prefile its rebuttal testimony would amount to an unwarranted sanction. The utility concludes by stating that in a voluminous document request, the Uniform Rules, the Florida Rules of Procedure, and the actual practice in DOAH, state, and federal court, allow for an opportunity to inspect the documents such that there would be a narrowing of the documents requested which might need to be copied.

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<sup>2</sup> Rule 28-106.204(3), F.A.C., requires motions, other than a motion to dismiss, to "include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has an objection to the motion."

Analysis and Ruling

In OPC's Amended First Request for Production of Documents to KW Resort Utilities Corp. (Nos. 1-62), OPC specifically requests that copies of the documents be produced at its office in Room 812, 111 W. Madison Street, Tallahassee, Florida. If the utility was not going to follow this request, it should have so advised OPC, or at least contacted OPC to see if other arrangements could be made. However, when OPC realized that the documents had not been produced as requested, it should have immediately contacted the utility.

Because of the delay in producing the documents, OPC's request for Extension of Time to File Prefiled Direct Testimony shall be granted in part and denied in part. OPC (and our staff) shall have an additional three days in which to prefile their testimony. The utility shall have no additional time to prefile its rebuttal testimony. Accordingly, the following controlling dates shall govern this matter:

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|--|--------------------|
| (1) Intervenors' testimony and exhibits    | December 10, 2007  |
| (2) Staff's testimony and exhibits, if any | December 24, 2007  |
| (3) Rebuttal testimony and exhibits        | January 15, 2008   |
| (4) Prehearing Statements                  | January 16, 2008   |
| (5) Prehearing Conference                  | January 24, 2008   |
| (6) Discovery deadline                     | January 30, 2008   |
| (7) Hearing                                | February 6-7, 2008 |
| (8) Briefs                                 | February 28, 2008  |

Based on the foregoing, it is

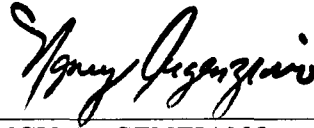
ORDERED by Commissioner Nancy Argenziano, as Prehearing Officer, that the Office of Public Counsel's Motion to Compel KW Resort Utilities Corp. to Respond to OPC's First Set of Production of Documents is moot. However, KW Resort Utilities Corp. shall state which specific documents do not exist in response to OPC's request for PODs. It is further

ORDERED that the Office of Public Counsel's Request for Extension of Time to File Prefiled Direct Testimony is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that the revised controlling dates set forth in the body of this Order shall govern this matter. It is further

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 8th day  
of November, 2007.



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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.