

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to establish rates for a new class of service for residential wastewater only (RWO) service in all jurisdictional service areas included in Docket No. 950495-WS and currently without authorized RWO rates by Florida Water Services Corporation.

DOCKET NO. 970328-SU  
ORDER NO. PSC-97-0627-PCO-SU  
ISSUED: May 30, 1997

ORDER GRANTING FLORIDA WATER SERVICES CORPORATION'S  
MOTION FOR PROTECTIVE ORDER AND  
DENYING THE OFFICE OF PUBLIC COUNSEL'S  
FIRST MOTION TO COMPEL

On March 26, 1997, the Office of Public Counsel (OPC) served Florida Water Services Corporation (Florida Water or utility) with the Citizen's First Request for Production of Documents and First Set of Interrogatories. On April 7, 1997, Florida Water filed its Objections to and Motion for Protective Order from OPC's First Set of Interrogatories and First Set of Requests for Production of Documents. On April 14, 1997, OPC timely responded to Florida Water's motion and filed the Citizens' First Motion to Compel. In its motion, OPC seeks an order compelling Florida Water to answer Citizens' Interrogatory No. 1 and Request for Production of Documents No. 1. OPC withdrew its other discovery request, Interrogatory No. 2 and Request for Production of Documents No. 2, because Florida Water provided this information to OPC. On April 28, 1997, Florida Water timely responded to OPC's First Motion to Compel.

Interrogatory No. 1 states that Florida Water's parent, Minnesota Power and Light (Minnesota), filed a form 8-K with the Securities and Exchange Commission which stated that Order No. PSC-96-1320-FOF-WS, resulted in an annualized increase in revenue to Florida Water of approximately \$11.1 million. The Commission's order granted Florida Water an annual increase of \$8,140,813 for water and wastewater, or \$7,438,787 if the return on equity adjustment is included. Interrogatory No. 1 requests the following:

DOCUMENT NUMBER-DATE

05443 MAY 30 97

FPSC-RECORDS-ME-RTING

Please provide a detailed reconciliation of the \$11.1 million figure included in the 8-K filing, and the figures of \$8,140,813 and \$7,438,787 calculable from the Commission's final order.

Request for Production of Documents No. 1 requests the following:

Each document . . . evaluating, calculating or indicating the revenue impact of the Commission's final order in docket 950495-WS (order P.C.-96-1320-FOF-WS[sic]). This request is intended to include, but not be limited to, all documents supporting the statement included in the Minnesota Power & Light 8-K filing at the Securities and Exchange Commission that the effect of the Commission's order in docket 950495-WS was an annualized increase of approximately \$11.1 million.

In its Motion for Protective Order, Florida Water states that this Commission should reject OPC's attempt to make the level of Florida Water's revenue increase in Docket No. 950495-WS an issue in the current proceeding (Docket No. 970328-SU). Florida Water states that even if establishing residential wastewater only (RWO) rates in the current docket yielded any measurable revenue whatsoever, the amount of revenue generated has no bearing on how Florida Water or its parent calculated the amount of a revenue increase in a completely separate docket. Therefore, Florida Water contends that OPC's discovery request is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence in the current docket.

In its response, OPC states that Florida Water's petition seeks to raise rates for customers taking RWO rates, thus, resulting in Florida Water receiving more revenue than it received from the final order in Docket No. 950495-WS. Therefore, OPC's discovery request is relevant, because if Florida Water received more revenue than indicated in this Commission's final order, this

ORDER NO. PSC-97-0627-PCO-SU  
DOCKET NO. 970328-SU  
PAGE 3

Commission should not grant the further increase sought in the current docket. To do so would set rates at a level allowing the utility an opportunity to earn more than a reasonable return on equity.

Florida Water responded to OPC's First Motion to Compel, stating that if new revenue were generated from the requested RWO service, the new revenue is designed specifically to cover the cost of providing the new service. If Minnesota's form 8-k states that the revenue increase in Docket No. 950495-WS is higher than the amount stated in Order No. PSC-96-1320-FOF-WS, that statement makes no difference whatsoever on the question of whether the total revenue requirement as determined by this Commission would in fact be exceeded by revenues generated with a new class of service in the current docket.

Rule 1.280(b), Florida Rules of Civil Procedure, provides that parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Upon reviewing OPC's discovery requests and the parties' arguments, I find that the information sought by OPC is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.

The scope of Docket No. 970328-SU is limited to rates charged on a going forward basis to RWO customers. Furthermore, in the prior rate case, Docket No. 950495-WS, this Commission set a revenue requirement based upon a projected test year ending December 31, 1996. The corresponding rates were also set using billing determinants at year end 1996. The relief sought in Docket No. 970328-SU, is rates for a new class of service beginning sometime in 1997, well after the projected test year. Therefore, Florida Water's Motion for Protective Order is granted, and OPC's First Motion to Compel is denied.

ORDER NO. PSC-97-0627-PCO-SU  
DOCKET NO. 970328-SU  
PAGE 4

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Florida Water Service Corporation's Motion for Protective Order is hereby granted. It is further

ORDERED that the Citizens' First Motion to Compel is hereby denied.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 30th day of May, 1997.

  
\_\_\_\_\_  
J. TERRY DEASON, Commissioner and  
Prehearing Officer

( S E A L )

TV

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, 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.