

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:

RESPONSE OF STAFF TO MOTION OF FLORIDA WATER SERVICES CORPORATION FOR PROTECTIVE ORDER ON STAFF'S INTERROGATORY NO. 5

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 (Florida Water) on March 18, 1999, as follows.

On March 8, 1999, the Commission staff served their Second Set of Interrogatories on Florida Water. However, on March 18, 1999, Florida Water filed its Objections to Commission Staff's Second Set of Interrogatories on Remand and Motion for Protective Order (Motion).

In its Motion, Florida Water objects to staff's Interrogatory No. 5. Staff's Interrogatory No. 5 states:

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- RCH _____
- SEC _____
- WAS _____
- OTH _____

For each water or wastewater service area with mixed use, please provide the utility's projected equivalent residential connections [ERCs] at buildout, in total and by type of customer (i.e., residential, commercial, multifamily, etc.), for the distribution and collection systems included in the minimum filing requirements filed for this case.

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, wherein the Court allowed the Commission the opportunity on remand, to justify its

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departure from its policy of rejecting the application of the lot count method to calculate used and useful percentages for water transmission and distribution lines and wastewater collection lines serving mixed use areas. The utility states that the "build-out" ERC numbers requested by Commission staff inappropriately attempts to expand the scope of this remand proceeding beyond the minimum filing requirements (MFRs) which form the basis for rate relief in the final order, and that the "build-out" ERCs are irrelevant to an evaluation of test year used and useful lines. The utility argues that the record in this proceeding includes Florida Water's MFRs which include information on test year customers by class, projected ERC numbers for the projected 1996 test year and maps and information displaying test year water and wastewater lines, and that parties must be limited to the information provided in the MFRs. Florida Water concludes that this remand proceeding should not be construed as a true-up proceeding or an avenue for intervenors or staff to attempt additional adjustments beyond the scope of the two limited used and useful determinations which were reversed by the Court.

In overturning the Commission's decision to use the lot count methodology to calculate the used and useful percentage for distribution and collection systems serving mixed use areas, the Court quoted the Commission's decision in In Re Application of Marco Island Utils., 87 F.P.S.C. 5:224, 230 (1987), which specifically said:

When there is mix of large condominiums and single family residences, there must be a complete evaluation of the water distribution and sewage collection systems to include the location of the existing customers and the extent of the systems. . . .

The Court then concluded that the Commission's change to the lot count methodology was a:

policy shift . . . essentially unsupported "by expert testimony, documentary opinion, or other evidence appropriate to the nature of the issue involved," . . . For this policy shift, too, the PSC must give a reasonable explanation on remand and adduce supporting evidence, if it can, to justify a change in policy required by no rule or statute.

Staff believes that the information it requests is designed to assist it in doing a "complete evaluation of the water distribution

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and wastewater collection systems" and to adduce supporting evidence, as required by the Court, for its "policy shift" to the use of the lot count methodology. Further, the information requested is reasonably calculated to lead to discovery of admissible evidence on the Issue:

In mixed use areas, for the water transmission and distribution and the wastewater collection systems, what method should be used to calculate used and useful transmission, distribution, and collection facilities, and what are the appropriate used and useful percentages?

The utility argues that the "build-out" ERC numbers requested by staff attempts to expand the scope of this remand proceeding beyond the MFRs and that the "build-out" ERCs are irrelevant to an evaluation of the test year used and useful. This argument is without merit. Staff's interrogatory seeks information which could be useful in ascertaining the best methodology for determining used and useful in mixed use areas. The best methodology is a policy determination which necessarily requires inquiry and a "complete evaluation" beyond the minimum filing requirements. Therefore, the information requested is reasonably calculated to lead to admissible evidence on the proper methodology for calculation of used and useful percentages for the transmission, distribution, and collection facilities. See Calderbank v. Cazares, 435 So. 2d 377 (Fla. 5th DCA 1983), and Rule 1.280(b)(1), Florida Rules of Civil Procedure

Wherefore, staff requests that the Motion of Florida Water Services Corporation for a Protective Order on Staff's Interrogatory No. 5 on Remand be denied.

Respectfully submitted, this 29th day of March, 1999.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the Response of Staff to Motion of Florida Water Services Corporation for Protective Order on Staff's Interrogatory No. 5, 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 29th day of March, 1999:

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