

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of JASMINE ) DOCKET NO. 920148-WS  
LAKES UTILITIES CORPORATION for ) ORDER NO. PSC-93-0652-PCO-WS  
Increased Water and Wastewater ) ISSUED: April 28, 1993  
Service Rates in Pasco County. )  
\_\_\_\_\_)

ORDER DENYING PUBLIC COUNSEL'S MOTION TO COMPEL

On March 22, 1993, the Office of Public Counsel (OPC) served Jasmine Lakes Utilities Corporation (Jasmine Lakes or utility) its Fourth Request for Production of Documents. Specifically, Production of Document Request (POD) No. 34 requested that the utility provide copies of Mr. J.L. Dreher's personal income tax returns for the years 1989 through 1992. Mr. Dreher is the utility's president as well as the utility's sole shareholder. Jasmine Lakes is a subchapter "S" corporation. On March 24, 1993, the utility filed an objection to the above request on the grounds that Mr. Dreher's personal income tax returns were outside the scope of the instant proceeding. Jasmine Lakes' also argues that the information contained in those documents is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

On March 31, 1993, the OPC (OPC) filed a Motion to Compel Discovery requesting that this Commission issue an Order compelling Jasmine Lakes to respond to POD No. 34. In its motion, OPC counters that the requested information sought is relevant to the proceeding and is necessary for OPC to analyze and determine the actual extent to which Mr. Dreher devotes his time to the utility's operations. OPC states that Mr. Dreher is requesting that the Commission approve his annual salary of \$76,500, which is being drawn from the utility. OPC contends that the utility has allocated two percent, or \$1,500, of Mr. Dreher's annual salary to nonutility operations and these nonutility operations are operated by a company, 80 percent of which is owned by Mr. Dreher. In addition, in its motion OPC states that in POD No. 8 it requested that the utility produce all W-2 forms from 1989 through 1991 whether issued by the utility or other companies or agencies to Mr. Dreher. According to OPC's motion, the utility responded by informing OPC that Mr. Dreher received a W-2 form for compensation paid by the utility only. OPC states in its motion that the tax returns sought are intended to test the accuracy of the utility's response to OPC's POD No. 8.

On April 6, 1993, the utility filed a response to OPC's motion to compel requesting that the Commission deny it. In its response,

DOCUMENT NUMBER-DATE

04627 APR 28 83

FPSC-RECORDS/REGISTRATION

Jasmine contends that the fact Mr. Dreher had any income reported for any period in the past, present or future, other than that paid to him by Jasmine Lakes is irrelevant to the Commission setting water and wastewater rates for Jasmine Lakes' services. The utility maintains that the only issue the Commission should consider is the current dollar value of the services that Mr. Dreher provides to Jasmine Lakes. The utility also argues that Mr. Dreher has filed a joint personal income tax return with his wife and any reportable income relating to Mrs. Dreher's portion of the return may subject Mr. Dreher to the threat of cross-examination to differentiate between that income reported which was his and that which was Mrs. Dreher's. The utility also argues that the information sought is not available because Mr. Dreher has yet to file his 1992 tax return and estimates that it will be filed in August or September of 1993. The utility asserts that Mr. Dreher did not become employed by Jasmine Lakes until July 1990 and, therefore, his 1990 tax return is not representative and his 1989 return does not apply. Therefore, the utility contends that the 1991 return is the only tax return that may be material, but this return is not relevant because of the aforementioned reasons.

On April 22, 1993, OPC requested permission to present oral argument on its Motion for Order Compelling Discovery filed on March 31, 1993. This request was granted and the parties presented oral argument on April 27, 1993.

The test for determining whether discovery is appropriate is set forth in Rule 1.280(b)(1) of the Florida Rules of Civil Procedure which provides that "parties may obtain discovery regarding any matter, not privileged, that is relevant for the subject matter of the pending action . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Section 90.401 of the Florida Evidence Code defines "relevance" as evidence tending to prove or disprove a material fact.

It appears from OPC's document request, its pleadings, and its oral argument, that it seeks documentation regarding the allocation of time spent by Mr. Dreher on utility operations. In oral argument, both parties cited cases which we do not believe are determinative of this issue.

The real issue of the relevance test is whether or not the requested document or information will directly answer the inquiry.

OPC seeks to ". . . determine the actual extent to which Mr. Dreher devotes his time to the utility's regulated utility operations." Specifically, OPC seeks whether or not Mr. Dreher spends 98 percent of his time operating and managing the utility. Mr. Dreher's tax returns will not indicate the allocation of time he devoted to nonutility operations. Even if his tax returns indicate income from affiliated businesses, they will not produce evidence of the proportion of time devoted to Jasmine Lakes, or the value of services that Mr. Dreher provides to the utility.


OPC has failed to demonstrate how Mr. Dreher's personal income tax returns are relevant to its stated intention in this proceeding to determine the allocation of time Mr. Dreher devotes to nonutility operations. Based on the above, this Prehearing Officer finds that these requested documents are not relevant to this proceeding. The Prehearing Officer is not persuaded that this particular discovery request is the only vehicle available to OPC to satisfy its inquiry and arrive at a determination on this issue.

Based on the foregoing, combined with the sensitivity of the information included in personal income tax returns generally, especially where a joint return is filed, OPC's Motion to Compel is hereby denied. Therefore, the utility shall not be required to respond to Document Request No. 34.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Luis J. Laurdeo, as Prehearing Officer, that the Office of Public Counsel's Motion to Compel Jasmine Lakes Utilities Corporation's president Mr. James L. Dreher to produce his personal income tax returns for the years 1989-1992 is hereby denied.

By ORDER of Commissioner Luis Lauredo, as Prehearing Officer this 28th day of April, 1993.

  
\_\_\_\_\_  
LUIS J. LAUREDO, Commissioner  
and Prehearing Officer

( S E A L )

RG

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), 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.