

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, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.

DOCKET NO. 950495-WS
ORDER NO. PSC-99-0612-PCO-WS
ISSUED: April 2, 1999

ORDER DENYING UTILITY'S MOTION FOR
PROTECTIVE ORDER ON STAFF'S INTERROGATORY NUMBER FIVE

On March 8, 1999, Commission staff served their Second Set of Interrogatories on Remand on Florida Water Services Corporation (Florida Water or utility). 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:

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 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

DOCUMENT NUMBER-DATE

04274 APR-28

FPSC-REG0000 (FPSC0000)

DOCKET NO. 950495-WS
ORDER NO. PSC-99-0612-PCO-WS
PAGE 2

the final order and must continue to do so on remand and that 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 Commissions 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.

The information requested by staff appears to be designed to assist it in doing a complete evaluation of the water distribution and wastewater collection systems and to adduce supporting evidence for the use of the lot count methodology as required by the Court. Further, the information requested is reasonably calculated to lead to discovery of admissible evidence on Issue 2 in staff's recommendations dated March 4, and 18, 1999. Issue 2, specifically reads as follows:

DOCKET NO. 950495-WS
ORDER NO. PSC-99-0612-PCO-WS
PAGE 3

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?

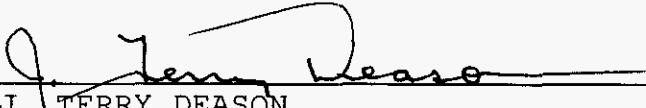
See Calderbank v. Cazares, 435 So. 2d 377 (Fla. 5th DCA 1983), and Florida Rule Civil Procedure 1.280(b)(1).

In reviewing Interrogatory No. 5, it appears that the information sought could reasonably lead to admissible evidence on the correct method to be used in calculating the used and useful percentages for transmission, distribution, and collection facilities in mixed use areas. Therefore, Florida Water's Motion for a Protective Order on Staff's Interrogatory No. 5 is denied.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the Motion of Florida Water Services Corporation for a Protective Order on Commission Staff's Interrogatory No. 5 is denied.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 2nd day of April, 1999.



J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

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DOCKET NO. 950495-WS
ORDER NO. PSC-99-0612-PCO-WS
PAGE 4

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.