

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate increase)	DOCKET NO. 910980-TL
by UNITED TELEPHONE COMPANY OF FLORIDA.)	ORDER NO. 25226
_____)	ISSUED: 10/17/91

ORDER DENYING MOTION TO REQUIRE RESPONSE
TO DISCOVERY REQUESTS BY OCTOBER 10, 1991

By motion filed September 25, 1991, the Office of Public Counsel (OPC) has moved the Commission to require United Telephone Company of Florida (United) to respond to OPC's first set of requests for production of documents and first interrogatory no later than October 10, 1991. OPC served its first set of requests for production of documents and its first interrogatory also on September 25, 1991. OPC states that this motion relates to its request that the full Commission review United's request for approval of a test year period beginning July 1, 1992, and ending June 30, 1993, and its request for a full evidentiary hearing on United's test year.

OPC's requests ask for information that would demonstrate the level of success United has experienced in forecasting its revenues, expenses, rate base, and capital structure. OPC states that the Commission should require that United respond to these discovery requests in 15 days in order to expedite the resolution of the issues related to United's test year. In addition, OPC states that it should not be unduly burdensome for United to have to respond in such a time frame.

On October 10, 1991, United filed a motion for protective order requesting that the Commission not require it to respond to discovery until after it has filed a petition in this case. United cites Rule 1.050 of the Florida Rules of Civil Procedure, which states that an action is deemed commenced when the complaint or petition is filed, and Rules 1.350(b) and 1.340(a), which provide that requests for production of documents and interrogatories may be served on parties after an action is commenced. It is United's view that this action will not have commenced until it has filed its petition. If the Commission decides to consider OPC's motion for full Commission review and a 120.57 hearing as a petition, then United requests that it not be required to respond to OPC's requests for production or answer its first interrogatory prior to the 45 days after the initial pleading was served on United as provided for in Rules 1.340 and 1.350(b).

On October 10, 1991, OPC filed its opposition to United's motion for a protective order. In its opposition, OPC reiterates

DOCUMENT NUMBER-DATE

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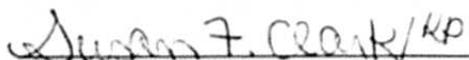
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that its primary rationale for requesting such a short response time is to enable it to explore the appropriateness of United's proposed test year. Therefore, OPC contends, this discovery must be produced prior to United filing its MFRs based on its requested test year.

It is clear that all of the discovery OPC has requested will be appropriate in the rate case for which United intends to file its MFRs on November 15, 1991. United concedes that in its motion. Also, it is clearly within our discretion to grant expedited discovery in appropriate circumstances. Although we do not find that OPC has justified the extremely short time frame it has requested, we do find it appropriate to grant OPC's request to the extent that United shall produce the requested documents and answer OPC's first interrogatory no later than Monday, October 21, 1991.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 17th day of OCTOBER, 1991.



SUSAN F. CLARK, Commissioner
and Prehearing Officer

(S E A L)

SFS

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.

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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 sewer 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.