

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of PALM COAST	)	DOCKET NO. 890277-WS
UTILITY CORPORATION for increased	)	ORDER NO. 22484
rates in Flagler County	)	ISSUED: 2-1-90
_____)		

ORDER GRANTING IN PART AND DENYING IN PART THE OFFICE OF PUBLIC COUNSEL'S THIRD MOTION TO COMPEL

BACKGROUND

By Order No. 18785, issued February 2, 1988, this Commission initiated an investigation into the level of Palm Coast Utility Corporation's (PCUC's) investment in utility plant assets. Docket No. 871395-WS was opened in order to process the investigation. By Order No. 18713, issued January 21, 1988, this Commission acknowledged the Office of Public Counsel's (OPC's) intervention in the investigation docket.

On May 19, 1989, PCUC completed the minimum filing requirements for a general rate increase and that date was established as the official filing date. Docket 890277-WS was opened in order to process PCUC's rate application. By Order No. 21666, issued August 2, 1989, this Commission acknowledged OPC's intervention in the rate case docket.

By Order No. 21794, issued August 28, 1989, the Commission subsumed Docket No. 871395-WS, the investigation docket, into Docket No. 890277-WS, the rate case docket.

On July 21, 1989, OPC served its first set of interrogatories and first request for production of documents upon PCUC. On July 27, 1989, OPC served its second request for production of documents upon PCUC.

On July 31, 1989, PCUC filed objections to and requests for clarification of OPC's first set of interrogatories and first request for production. On August 7, 1989, PCUC filed objections to and requests for clarification of OPC's second request for production.

On August 30, 1989, OPC served its third request for production upon PCUC.

On September 12, 1989, OPC filed a motion to compel PCUC to respond to its discovery requests.

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On September 25, 1989, PCUC filed a response to OPC's motion to compel, a motion to strike certain portions of OPC's motion to compel, a motion for a protective order and a request for oral argument on the various discovery matters.

By Order No. 22117, issued October 31, 1989, the Prehearing Officer granted OPC's motion to compel and denied PCUC's motion for protective order, its motion to strike and its request for oral argument.

On October 6, 1989, OPC served its fourth request for production of documents.

On October 16, 1989, PCUC filed objections to OPC's fourth request for production of documents.

On November 9, 1989, OPC served its fifth request for production of documents.

On November 22, 1989, OPC filed a second motion to compel responses to its discovery requests. OPC's motion was considered at the prehearing conference which was held on November 20, 1989, and continued on November 27, 1989. By Order No. 22255, issued December 1, 1989, the Prehearing Officer granted in part and denied in part OPC's motion to compel.

A formal hearing was held in PCUC's service area on December 6, 7, and 8, 1989. The hearing was not completed during the allotted time, however, and was rescheduled for January 8, 1990.

On December 22, 1989, OPC filed a third motion to compel responses to its discovery requests.

On December 29, 1989, PCUC filed a motion for a two-week extension of time to respond to OPC's third motion to compel. PCUC's motion was granted at the January 8, 1990 extended hearing date.

On January 12, 1990, PCUC filed a response to OPC's third motion to compel.

On January 18, 1990, OPC filed a reply to PCUC's response to OPC's third motion to compel.

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Each of the discovery requests sought to be compelled, as well as OPC's and PCUC's arguments thereon, is discussed in detail below.

FIRST SET OF INTERROGATORIES

6. List all costs which the Company incurs in the installation of a typical PEP system. Identify each item, fully describe and list the associated cost.

Originally, PCUC objected to this interrogatory on the ground that it was vague. PCUC requested clarification as to the phrase "typical PEP system." PCUC also argued that it was impossible to break down these costs due to averaging effects of keeping PEP components in inventory.

By Order No. 22117, the Prehearing Officer granted OPC's first motion to compel and ordered PCUC to "furnish the requested information based upon the average costs for the installation of PEP systems installed during the test year."

On November 30, 1989, PCUC served a response to Interrogatory No. 6. In its response, PCUC cautioned that the amounts listed did not necessarily represent "typical" or "average" costs.

In its motion to compel, OPC argues that the information supplied by PCUC is not responsive. OPC suggests that, if there is more than one type of PEP system, PCUC should be compelled to furnish average cost data for each type of PEP system.

PCUC contends that its response was, in fact, responsive to both OPC's request and Order No. 22117. PCUC also continues to argue that it is unable to provide a "better response" due to the averaging of inventoried components.

OPC, in its reply, again argues that the answer is unresponsive and that PCUC should provide cost data for each type of system. OPC argues that, only then can it "begin to quantify the additional investment PCUC must make to serve the 20,000+ homesites to be served by the PEP systems."

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Although it is somewhat confounding that PCUC is unwilling or unable to identify costs which might be labelled "typical" or "average", it is clear that such unequivocal information is not forthcoming. Nevertheless, PCUC did provide a response to Interrogatory No. 6.

Further, the purpose of this proceeding is to consider PCUC's present, not future, investment in utility plant. It is unclear how the additional information sought to be compelled relates to PCUC's present investment. Accordingly, OPC's motion to compel is denied insofar as it relates to Interrogatory No. 6.

22. State the amount of funds collected from lot owners, where water and sewer connections have not as yet been made, that relate to plant, mains, collection systems, including PEP, etc., where the Company has not yet made the investment in the physical plant.

PCUC originally objected to this interrogatory as being irrelevant, oppressive and unduly burdensome. PCUC also argued that it did not have possession, custody or control of the information. In response to OPC's first motion to compel, however, PCUC stated that, if OPC indicated for what dates it sought the requested information, it would provide a response. Accordingly, by Order No. 22117, OPC was ordered to specify the dates of interest and PCUC was ordered to supply the information. The information has, apparently, not been provided.

OPC argues that PCUC should be compelled to provide the information as provided in Order No. 22117.

In its response, PCUC argues that OPC never indicated the dates of interest. In addition, PCUC now argues that it cannot provide the information because Interrogatory No. 22 requests amounts collected from "lot owners". According to PCUC, it cannot segregate the information between deeded lot owners and undeeded lot purchasers.

In its reply, OPC argues that PCUC's newest objection is nothing more than a stalling tactic. OPC argues that PCUC should be compelled to provide this information for all lot purchasers, whether deeded or not.

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The resolution of this matter appears quite simple; since PCUC cannot segregate the information between deeded owners and undeeded purchasers, and since OPC does not want segregated information in any event, PCUC shall provide the requested information for all lot purchasers, whether deeded or not.

31. State the disposition of the contractor retention amounts due Lowery Brothers, Inc. and Halifax Paving, Inc. when the Company ceased doing business with these firms in 1974-1975.

a. Did ICDC give the proper credit to PCUC for these funds which were not paid to the contractors?

b. State the disposition of the liability for contractor retentions which was not paid.

On January 19, 1990, PCUC provided a response to Interrogatory No. 31. Accordingly, no further disposition needs to be made at this time.

#### FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

5. Provide copies of all invoices which would represent all charges incurred in the installation of a typical PEP system.

Initially, PCUC objected to this request for production of documents (POD) because the term "typical" was vague. PCUC also argued that, due to the averaging effects of keeping PEP system components in inventory, it could not identify such invoices.

By Order No. 22117, the Prehearing Officer rejected PCUC's arguments and ordered PCUC to provide representative invoices to OPC. PCUC provided selected invoices to OPC on November 30, 1989.

In its motion to compel, OPC now argues that PCUC should be compelled to provide representative invoices for all types of PEP systems.

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In its response to OPC's motion to compel, PCUC argues that the information already provided was responsive to OPC's request and that OPC cannot use a motion to compel to seek information not previously requested.

OPC argues that it is not attempting to seek new information, but information which is responsive to its original POD.

Although, again, it is not clear why PCUC is reluctant to characterize its response as "typical" or "average", it does appear that the materials furnished were responsive to OPC's request. OPC's motion to compel is, therefore, denied insofar as it relates to POD No. 5

15. Provide a copy of all materials supporting AFUDC which was to be sent to Public Counsel no later than June 9, 1989 per a letter dated May 26, 1989 from Robert Kelly.

Originally, PCUC objected to this POD notwithstanding its alleged agreement to provide the requested information. However, in response to OPC's first motion to compel, PCUC did not renew its objection. Accordingly, by Order No. 22117, PCUC was required to provide a response to POD No. 15. On November 30, 1989, in response to POD No. 15, PCUC provided Attachment J.

OPC argues that Attachment J is unresponsive to its request. OPC contends that, after reviewing PCUC's continuing property records (CPR), it selected thirty items from that document for which it requested support. For each item requested, OPC was given a reference (KEY) number, along with a description, an account number, an amount and a date. According to OPC, PCUC represented that it could access supporting information for the selected items by using the KEY number and an on-line terminal.

PCUC argues that Attachment J is responsive to the request. PCUC also argues that according to a February 12, 1981 Staff Audit Report, the audit included a review of overhead and AFUDC detail. Accordingly, PCUC believes that it has fully responded to OPC's request.

Upon review, Attachment J does not seem to provide any meaningful information. Further, from OPC's discussion of the

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matter, it appears that it would be simple for PCUC to access the information. Based upon the discussion above, OPC's motion to compel a response to POD No. 15 is granted.

THIRD REQUEST FOR PRODUCTION OF DOCUMENTS

21. Provide a copy of the applicable tax returns, work papers, schedules or other documents which show the tax treatment of the \$2.5 million in costs relating to the costs incurred to correct defective work in the early 1970's which were subsequently transferred from ICDC to PCUC.

a. Provide this data for each year where ICDC accumulated these costs.

PCUC argues that no PCUC tax returns, workpapers, schedules or other documents exist which show the tax treatment of the approximately \$2.5 million required to repair and/or complete defective plant.

OPC, on the other hand, argues that it must review the relevant documents in order to determine whether ITT Community Development Corporation (ICDC) expensed all or any part of the \$2.5 million. OPC, therefore, argues that PCUC must be compelled to furnish the tax workpapers or the supporting documents regardless of where they reside.

Notwithstanding who actually prepared the subject tax returns, workpapers, schedules or other documents, it is difficult to believe that PCUC does not have possession, custody or control of these records, at least to the extent necessary to demonstrate that these purported construction costs were capitalized for tax purposes. Regardless of who has actual possession, custody or control of these records, the records relate to a regulated utility's investment in utility plant. PCUC should, therefore, possess such records and is hereby deemed to have constructive possession of the records.

Based upon the discussion above, OPC's motion to compel a response to POD No. 21 is hereby granted.

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FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS

35. Provide copies of Commission orders which Mr. Guastella referred to in his deposition testimony that support his position that a portion of prepaid connection charges (sewer and water availability fees) are treated as non used and useful in rate filings by General Development Corporation and Deltona Corporation subsidiaries.

OPC has withdrawn its motion to compel with respect to POD No. 35. This matter is, therefore, rendered moot.

37. Provide copies of all journal entries to record AFUDC for the period 1978-1983.

OPC argues that, at a minimum, PCUC should provide the journal entries for the thirty selected CPR items discussed previously.

PCUC maintains that all of the journal entries are available for inspection at its offices.

Upon review, while the number of AFUDC-related journal entries may be numerous, it does not appear overly burdensome to require PCUC to provide the entries for the thirty selected AFUDC items. OPC's motion to compel is, therefore, granted, but only to the extent of the thirty selected AFUDC items.

38. Refer to page 10 of 19 of used and useful analysis of operating departments. Provide copies of the Company's current, one year and 10 year forecast as outlined as part of Assistant Comptroller's duties.

POD No. 38 was the subject of some discussion at the prehearing conference. By Order No. 22255, PCUC was ordered to provide legible copies of test-year current, one-year and ten-year forecasts.

According to PCUC, it provided these documents to OPC on November 29, 1989.



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OPC argues that all it has received is a copy of PCUC's 1988 test year operating plan.

To the extent that PCUC has not provided legible copies of its one-year and ten-year forecasts and such documents do, in fact exist, OPC's motion to compel is granted.

FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS

40. Obtain from ICDC and provide copies of the following:

a. A listing of all customers or lot purchasers by lot number where ICDC has guaranteed the water and/or sewer prepaid connection fees at a level in effect when the guarantee was made.

b. A listing of the current accounts receivable balance of prepaid sewer connection fees and separately listing prepaid water connection fees as of December 31, 1988. This listing should be by lot number and totals should be provided.

c. A listing of all interest fees, installment fees or any other amounts collected in addition to the principal amount of prepaid water and prepaid sewer connection fees from inception through December 31, 1988. This should be by lot number.

OPC argues that it is imperative that it review this information and its implications for this proceeding as soon as possible.

PCUC objects to providing this information. PCUC argues that it is improper for OPC to seek this information from PCUC when mechanisms exist whereby OPC may request this information from ICDC.

The Prehearing Officer does not agree. These requests are related to monies collected for connection to PCUC's utility

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systems. PCUC must have access to the data, otherwise, how could it determine what remaining amounts are due at the time of the customer connection. However, it does not appear that the information requested in POD No. 40(a) is relevant to this proceeding. Whether ICDC has or has not guaranteed any level of connection fee does not matter; PCUC would still have to collect the prevailing fee.

In addition, OPC's request for this information by lot appears burdensome. Nevertheless, it does not appear to be burdensome to require PCUC to provide the information requested in PODs Nos. 40(b) and (c) on an aggregate basis, from inception through the end of the test year. With regard to POD No. 40(b), PCUC shall report the outstanding uncollected balance for advance payments made pursuant to the applicable offering statements.

41. A schedule of monthly remittances from ICDC to PCUC which supports the remittance of CIAC and any adjustments to CIAC due to cancellations, etc. Provide the information for the period when ICDC began making the monthly remittances through 1988.

42. A listing by month for the years 1978 through 1988 of prepaid water connection fees remitted from ICDC to PCUC relating to purchasers who are not current customers and who are not requesting current service.

Originally, PCUC merely stated that no such schedules or lists exist. OPC argues that, if no such schedules or lists actually exist, PCUC should at least provide whatever documentation it does possess with regard to these requests.

In response to OPC's arguments, PCUC argues that a motion to compel cannot be used to request information not previously requested.

While it seems that it may have been more appropriate for OPC to have requested this information in interrogatory form, in order that we may finally resolve some of these matters, it appears appropriate to grant OPC's motion to compel a response. PCUC shall, therefore, either create such schedules

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or lists, or produce the information from which OPC may create such schedules or lists.

45. Provide a listing of all water prepaid connection fees included in the category sewer connection fees on Schedule A-16 of the MFRs.

In response to this POD, PCUC provided an exhibit which indicates that there was a total of \$93,593 of water prepaid connection fees included in the category of wastewater prepaid connection fees. PCUC further stated that there is no separate listing of such prepaid water connection fees.

OPC argues that it cannot determine whether PCUC's answer is truly responsive.

In its response, PCUC asserts that it has provided a responsive answer.

In its reply to PCUC's response, OPC continues to argue that the information provided by PCUC is unresponsive.

While it is clear that OPC does not accept the amount, it does appear that PCUC has provided a satisfactory response. Accordingly, OPC's motion to compel is denied with respect to POD No. 45.

46. Provide copies of the specific tax work papers which show that the company is depreciating for tax purposes the AFUDC capitalized in 1978 and 1979.

OPC has withdrawn its motion to compel insofar as it relates to POD No. 46. The matter is, therefore, deprived of any further practical significance.

48. Provide copies of the work papers which clearly show the method of depreciating fixed asset additions for tax purposes by year through 1988.

In response to this request, PCUC referred OPC to tax workpapers already provided. According to OPC, however, these

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workpapers show only cumulative information and do not indicate the method, as requested.

PCUC argues that the answer is responsive. OPC does not agree that the answer is responsive.

Although the workpapers do not show the method, it does appear that PCUC has provided a responsive answer. Accordingly, OPC's motion to compel is denied with respect to POD No. 48.

49. Provide a copy of the offering statement and contracts which first provided for the collection of prepaid water connection fees prior to a customer requesting service.

PCUC's response to this request has been and continues to be that it does not have possession, custody or control of the documents requested.

OPC argues that ITT is the real party in interest and that we should require the production of these documents.

This request does not appear to be relevant to this proceeding. It appears to be a request for contracts between a non-regulated company and lot purchasers who may or may not become customers of PCUC. Accordingly, OPC's motion to compel production of these documents is denied.

50. Provide copies of all short or long term forecasts provided to PCUC by ICDC of expected water and sewer CIAC collections.

In response to this POD, PCUC provided Attachment C. According to OPC, Attachment C is not responsive to its request.

Upon review, the relevance of this POD is unclear. The purpose of this proceeding is to establish an appropriate revenue requirement for the test year. This POD appears to be concerned with subsequent levels of CIAC relative to as yet undetermined plant amounts. Accordingly, OPC's motion to compel is denied insofar as it relates to POD No. 50.

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SCHEDULE FOR REMAINING ACTIVITIES

At this time, there does not appear to be any reason to make any major departures from the current case schedule. In recognition of certain statements made at the hearing, however, the parties are hereby granted a one-week extension of time to file briefs. PCUC shall provide responses in accordance with this Order no later than thirty days from the date of this Order. The parties shall brief all issues to the extent possible, based upon the record as it currently stands. However, should PCUC's provision of any further information necessitate any future submittals or proceedings of any sort, OPC may request a continuance at that time.

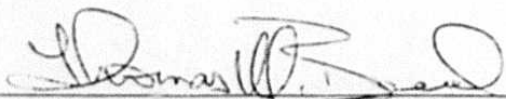
Based upon the foregoing, it is

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that the Office of Public Counsel's third motion to compel is granted in part and denied in part, as set forth in the body of this Order. It is further

ORDERED that Palm Coast Utility Corporation shall provide the information compelled herein to the Office of Public Counsel no later than thirty (30) days from the date of this Order. It is further

ORDERED that the parties shall prepare their briefs, based upon the record as it stands at this time, and file them no later than February 15, 1990.

By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 1st day of JANUARY, 1990.

  
THOMAS M. BEARD, Commissioner  
and Prehearing Officer

( S E A L )

RJP

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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 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.