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Sent: Friday, March 27, 2009 3:21 PM
To: Filings@psc.state.fl.us
Cc: CHRISTENSEN.PATTY; Cheryl Martin; Jennifer Brubaker; John T. English; Norman H. Horton; Ralph Jaeger
Subject: 080366-GU Electronic Filing
Attachments: 080366-GU Response to Discovery Objection.pdf

Electronic Filing

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b. Docket No. 080366-GU

In Re: Petition for Rate Increase by Florida Public Utilities Company's Gas Division

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of three pages.

e. The documents attached for electronic filing is Citizens Response to Florida Public Utilities Company Objections and Motion for Leave to Conduct Additional Discovery and Compel Discovery Responses .

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by
Florida Public Utilities Company's
Gas Division

Docket No.: 080366-GU

Filed: March 27, 2009

**CITIZENS' RESPONSE TO FLORIDA PUBLIC UTILITIES COMPANY OBJECTIONS
AND MOTION FOR LEAVE TO CONDUCT ADDITIONAL DISCOVERY AND
COMPEL DISCOVERY RESPONSES**

The Citizens of the State of Florida (Citizens) hereby file their Response to Florida Public Utilities Company (FPUC or Company) Objection and Motion For Leave to Conduct Additional Discovery and to Compel Discovery Responses as follows:

- 1) By Order No. PSC-09-0010-PCO-GU, the Commission acknowledged Citizens intervention in the above docket. Pursuant to Section 350.0611(1), Florida Statutes, that Citizens are granted the authority to “. . . utilize therein all forms of discovery available to attorneys in civil action generally, . . .”
- 2) Rule 1.340(a), Florida Rules of Civil Procedure, provides that a party may without leave of the court, serve up to 30 (including subpart) written interrogatories “. . . unless the court permits a larger number on motion and notice and for good cause.”
- 3) As discussed in Citizens first response to the Company's first objection to discovery which is incorporated by reference, Citizens have good cause to seek more than 30 interrogatories. FPUC is seeking a \$10 million dollar increase and Citizens have served specific interrogatories probative of the validity of those costs and expenses that the Company is seeking recovery from customers.

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FPSC-COMMISSION CLERK

- 4) FPUC has sought to use the Commission's PAA process, and therefore no Order Establishing Procedure has been issued in the above docket. Just because the Company has opted to utilize the Commission's PAA process, Citizens should not be penalized in their ability to conduct meaningful discovery by being limited to 30 interrogatories. In FPUC's last electric rate case in which the Company requested an approximate \$5 million increase, in Order Establishing Procedure, Order No. 07-0811-PCO-EI, issued October 8, 2007, Citizens were permitted 200 interrogatories including subparts. Similarly, Citizens should be permitted 200 interrogatories including subparts, as well as 200 requests for production of documents including subparts, and 200 admissions.
- 5) Moreover, Commission staff has propounded 100 "data requests" in lieu of formal discovery which is also in excess of the limitation of 30 written interrogatories set forth in Rule 1.340(a), Florida Rules of Civil Procedure. As a matter of fundamental fairness, all parties should be permitted the same opportunity to gather information through formal discovery and/or "data requests."
- 6) Citizens do not expect due to the time constraints of the PAA process that Citizens will be able to conduct a second round of discovery based on the first round of discovery until after the PAA decision is rendered (which may or may not render additional discovery moot). However, receipt of this information is necessary to evaluate the case. The lack of this information prior to the PAA decision will increase the likelihood that a formal hearing process will be needed to protect the customers' interests.
- 7) Thus, Citizens require the ability to conduct discovery. In the interest of administrative economy and fundamental fairness, the Company should be compelled to produce responses to the discovery that has already been propounded by Citizens. It would be unfair

to limit Citizens discovery ability based on the Company's choice of procedural processing of the docket and inefficient to require Citizens to reserve said discovery.

WHEREFORE, the Citizens hereby request that the Commission grant its Motion for Leave to Conduct Additional Discovery and to Compel Discovery Responses.

Respectfully Submitted,

JR Kelly
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CERTIFICATE OF SERVICE
DOCKET NO. 080366-GU

I HEREBY CERTIFY that a true and correct copy of the foregoing to Citizens' Response to Florida Public Utilities Company Objections and Motion for Leave to Conduct Additional Discovery and Compel Discovery Responses Florida Public Utilities Company has been furnished by U. S. Mail and electronic mail to the following parties on this 27th day of March, 2009.

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