

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of St. George)
 Island Utility Co., Ltd, for in-)
 creased rates and service availa-)
 bility charges for water service)
 in Franklin County)

DOCKET NO. 871177-WU
 ORDER NO. 21741
 ISSUED 8-17-89

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
 JOHN T. HERNDON

ORDER DENYING RECONSIDERATION

BY THE COMMISSION:

On May 9, 1989, the Office of Public Counsel, ("OPC"), filed a Motion for Reconsideration of Order No. 21122, which established rate base, set rates and charges, outlined a number of deficiencies and established a schedule for SGI to correct these deficiencies. On May 10, 1989, OPC filed a Request for Oral Argument on its motion. By Order No. 21435, issued June 26, 1989, OPC's request for oral argument was denied. On May 22, 1989, St. George Island Utility Company, Ltd., ("SGI" or "utility"), filed a Response to Motion for Reconsideration.

The standard that must guide the Commission when ruling on a motion for reconsideration is whether we have made any error or omission of fact or law in the original ruling.

In its Motion for Reconsideration, OPC argues that, by Order No. 21122, we overstated the original cost of the utility system by calculating SGI's investment at 84 percent of the utility's original cost study. Each of OPC's arguments will be addressed separately.

Administrative Notice of Tax
 Returns and Financial Statements

OPC argues that SGI's investment in the water system is less than that stated in Order No. 21122. However, this claim is only supported by statements in the tax return attached to Order No. 20913. By that Order, this Commission took

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administrative notice of "the facts that the attached copy of the Federal Income Tax Return was filed by Leisure Properties, Ltd., on October 15, 1980, and the attached copy of certain financial statements of Leisure Properties, Ltd., were examined and certified by Thompson, Brock & Company, CPAs, on September 24, 1980." Order No. 20913 specifies that "said administrative notice does not include recognition of the truth of the statements in the copies of the 1979 Federal Income Tax Return and Financial Statements of the Leisure Properties, Ltd." (emphasis added).

As stated explicitly in Order No. 20913, the truth of the statements in the tax return was not administratively noticed. Accordingly, the truth of the statements in those returns are not part of the record and cannot be relied upon to support the conclusion urged by OPC.

Valves and Fittings

OPC first argues that we improperly added valves and fittings to the cost of pipe. OPC contends that, since SGI's study separates valves but not fittings, "the most logical assumption" is that the cost of fittings is included with the valves. According to OPC, by adding the valves and fittings to the PVC pipe, we have overstated the original cost of the SGI water system. OPC also argues that we have erred by allocating the full amounts of labor, equipment, engineering, technical and miscellaneous costs to the pipe. According to OPC, by not allocating any of these costs to the valves, we have overstated the original cost of SGI's water system. OPC, therefore, contends that we should have allowed only 68 percent, rather than 84 percent, of SGI's original cost study estimates.

At the hearing, OPC and SGI each presented estimates of the original cost of the system. Our review of the record, however, indicated that OPC's estimate was low and SGI's was high. Since the only actual costs of record were 84 percent of those estimated by SGI, we established the original cost to be 84 percent of SGI's estimates. Although this approach was not advanced by either of the parties, we believe that it is fully supported by the facts in the record. In Gulf Power Co. v. Florida Public Service Commission, 453 So.2d 799 (Fla. 1984), the Court affirmed this Commission's decision to use an alternative to the two positions urged by the adversary parties. The Court stated that "[i]t is the PSC's prerogative

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to evaluate the testimony of competing experts and accord whatever weight to the conflicting opinions it deems necessary." Although the PSC rejected both alternatives, the Court stated that the Commission "was presented with sufficient evidence to enable it to choose a reasonable alternative." Further, when there is evidence of different values, the Commission has a duty to consider the testimony presented and determine a reasonable value within the range of those suggested. Florida Retail Federation v. Mayo, 331 So.2d 308 (Fla. 1976), United Telephone Co. v. Mayo, 345 So.2d 648 (Fla. 1977). Accordingly, we believe that our alternative is a proper exercise of our authority.

As for the substance of OPC's arguments, OPC's first claim is based on a "logical assumption". It is exactly that, an assumption, wholly lacking record support. A mere assumption cannot be relied on, and fails on its face. Even if we were to go outside the record as OPC suggests, we do not believe it is logical to assume that fittings are associated with valves. Fittings are more commonly required to join pipes to pipes, rather than pipes to valves. Valves are used only at those junctures where the ability to turn off flows is necessary. The fittings are, therefore, more logically associated with pipes.

OPC's remaining arguments are likewise without merit. OPC's second claim asserts that there is "no question" that the basis of its claim is correct. Its second and third claims likewise assert that certain costs "should be" allocated. These assertions, as in OPC's first claim, are mere assumptions, wholly unsupported by the record. They cannot be relied upon to support the finding urged by OPC. While the record does not specifically address the subject costs, our expertise leads us to conclude that the majority of these costs are associated with laying the pipe. Even if OPC were correct that the costs should be allocated, the vast majority of these costs would be associated with the fittings rather than the valves. Thus, since there are many more fittings than valves, and since the record does not specify the ratio of fittings to valves, we find that our decision to allocate these costs to the pipe is appropriate.

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Replacement vs. Original Cost

On page 7 of Order No. 21122 we noted the range of estimates of original cost in the record and found that a reasonable approximation of original cost would be a value within this range of estimates.

OPC objects because said description of cost estimates inadvertently describes OPC's original cost estimate as \$2,296,580 when that amount is actually OPC's replacement cost estimate. Even if OPC's assertions are considered accurate, the range of estimates of record would not vary. Accordingly, our finding that a reasonable approximation of original cost would be a value within the range of estimates of record could not be affected.

OPC's Costs

OPC's motion asserts that "the Commission erroneously believed that OPC's estimate did not account for all costs". We agree that OPC witness DeMeza testified that construction costs are part of the difference between estimates. However, adoption of OPC's claim would not materially change the amount of the utility's investment recognized in Order No. 21122 because the authorized percentage of original cost is based upon the utility's estimates, not OPC's estimates.

For the above reasons, we find it appropriate to deny OPC's Motion for Reconsideration.

RESPONSE TO MOTION FOR RECONSIDERATION

The Response to Motion for Reconsideration filed by SGI was filed 13 days after OPC's motion. Pursuant to Rule 25-22.060(3), Florida Administrative Code, the response was to be filed within 12 days. Accordingly, we find that the utility's response was untimely and should not be considered.

In any event, the substance of the utility's arguments were already covered by previous discussion in this Order. Seven pages of SGI's nine page motion argue against acceptance of the truth of the statements in the tax returns that were administratively noticed. The substance of SGI's remaining arguments is that "the Commission has properly calculated the

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ratios after full and proper consideration of all the testimony presented by the parties," and that, even if OPC's assertions of Commission error are true, "this would amount to a mere harmless error which does not go to the validity . . . of the ultimate holding." Accordingly, SGI will not be harmed by our refusal to consider its response.

WHEREFORE, in consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration of Order No. 21122 is denied.

By ORDER of the Florida Public Service Commission
this 17th day of AUGUST, 1989.



STEVIE TRIBBLE, Director
Division of Records & Reporting

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NOTICE OF 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 the Commission's final action in this matter may request 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 by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.