

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption ) DOCKET NO. 910655-WU  
from Florida Public Service ) ORDER NO. PSC-92-0794-FOF-WU  
Commission regulation for ) ISSUED: 08/11/92  
provision of water service in )  
Broward County by H2OULTON )  
METERING SYSTEMS, INC. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

On January 22, 1991, H2Oulton Metering Systems, Inc. (H2Oulton or utility) requested a statewide exemption pursuant to section 367.022(8), Florida Statutes, which provides an exemption for resellers of water and wastewater service. By Order No. 24936, issued August 20, 1991, as proposed agency action, this Commission denied the utility's request for the exemption based on its determination that H2Oulton is not a utility. On September 6, 1991, H2Oulton filed its Petition on Proposed Agency Action and requested a hearing under section 120.57, Florida Statutes, which was modified later to a request for an informal hearing under section 120.57(2), Florida Statutes, and a waiver of any disputed issues of material fact. Following the administrative hearing held on February 17, 1992, the hearing officer filed her Recommended Order on March 20, 1992. H2Oulton filed its Exceptions to Hearing Officer's Recommended Order on April 7, 1992.

On May 27, 1992, the Commission issued its Final Order Denying Exemption, Rejecting Exceptions, and Closing Docket, Order No. PSC-92-0410-FOF-WU (the Final Order). On June 12, 1992, the utility filed a Motion for Reconsideration. H2Oulton raised two issues in its Motion for Reconsideration and requested the Commission to reconsider its final order in these two respects.

DOCUMENT NUMBER-DATE

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FILE RECORDS/REPORTING

A. Exemption

H2Oulton's request that we reconsider our Order on the exemption issue is actually a request that we adopt the following amendment:

That H2Oulton will qualify as an exempt utility under Section 367.022(8) of the Florida Statutes when H2Oulton is an obligor of the master water utility bills as to a property and has made application to the Commission and/or has terminated service as to those properties where no application is filed within 30 days of the Amended Final Order.

We find that H2Oulton's request is flawed. The purpose of a motion for reconsideration is to bring to the attention of the Commission some point which it overlooked or failed to consider when it rendered its decision in the first instance, such as a mistake of law or fact. Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). It is not an appropriate vehicle for rehashing matters which were already considered, or for raising matters which, even if adopted, would not materially change the outcome of the case. H2Oulton did not argue that this Commission made a mistake which it must go back and correct; rather, it argued that we should "update" our order by adding new facts not in the record, i.e., that H2Oulton now has become an obligor for the master water bill for each property it services. H2Oulton's motion for reconsideration is inappropriate because this Commission did not make a mistake of fact or law when we rendered our decision in Order No. PSC-92-0410-FOF-WU.

Additionally, H2Oulton's motion for reconsideration is actually a request to modify the Final Order and the fact that H2Oulton will become a co-purchaser of the water ignores the totality of the Hearing Officer's Recommended Order and this Commission's Final Order, in which we "adopt[ed] in toto the Hearing Officer's conclusions of law and recommendation."

In Order No. PSC-92-0410-FOF-WU, Conclusion of Law Number 1 clearly states:

H2Oulton is not a utility.... H2Oulton does not have a system that it owns, operates, manages or controls.... H2Oulton does not own, operate, manage or control a water or wastewater facility or plant or land connected with such a facility. Accordingly, H2Oulton does not provide water or wastewater services.... H2Oulton is, therefore, not a utility pursuant to Chapter 367, Florida Statutes.

Conclusion of Law Number 6 reiterates: "As stated in Conclusion of Law No. 1, H2Oulton is not a utility and, therefore, shall cease holding itself out as a utility."

On page 8 of the Final Order, this Commission held:

We find that the Hearing Officer's Recommended Order clearly sets out the proper rationale for finding that H2Oulton does not possess a "system" in the sense required in Section 367.021(11) for a "utility." H2Oulton simply ignores the definition of "utility" in Section 367.021(12) which informs the meaning of "system" set out in Section 367.021(11). The "system" must have facilities and land used to provide water or wastewater service to the public for compensation. H2Oulton does not provide the water or wastewater service in the situations in which it proposes to operate.

In its motion, H2Oulton simply addresses the last sentence of the previous paragraph, out of context from the Order as a whole. This does not change the fact that H2Oulton does not possess a system and is not a utility.

On page 9 of the Final Order, the Commission held:

Clearly, the Commission's jurisdiction is over utilities. H2Oulton is attempting to perform functions of a utility, such as collecting deposits for service and discontinuation of service. Since H2Oulton is not, by

definition, a utility, it cannot avail itself of the exemptions provided in Section 367.022, Florida Statutes, to utilities and cannot act in a fashion authorized for utilities by Chapter 367, be they regulated or exempt.

B. Confidentiality

H2Oulton's second request in its motion for reconsideration of the Final Order is:

That the Commission not order H2Oulton or the Commission Staff to disseminate the Final Order to customers with whom H2Oulton has a current or pending submetering contract, to landlords who have contracted or are proposing to contract with H2Oulton and to any associations or organizations of landlords or others that may be in a position to contract with H2Oulton as this is encompassed by the Confidentiality Order.

On February 11, 1992, H2Oulton filed a motion requesting confidential treatment of the information requested by Interrogatories Nos. 3 and 4 of the Commission Staff's First Set of Interrogatories, which included a request to list all properties to which H2Oulton is presently providing submetering service. In Order No. 25823, issued February 28, 1992, the Commission granted H2Oulton's request for confidentiality of this information.

The provisions of our Final Order requiring that it be disseminated to specific customers, landlords, and organizations, do not violate Order No. 25823's grant of confidentiality. Copies of the letters sent by the Commission Staff with the names and addresses of the properties to which H2Oulton is presently providing submetering service will be maintained as confidential. A redacted copy of the letter will be placed in the docket file, showing only the substance of the letter without any names or addresses.

C. Conclusion

H2Oulton's substantive arguments have all been made before, and this Commission has fully considered and rejected them. There was no mistake of fact or law in our Commission's Final Order. Based on the foregoing reasons, we find it appropriate to deny H2Oulton's Motion for Reconsideration and find that the docket shall be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration of Order No. PSC-92-0410-FOF-WU filed by H2Oulton Metering Systems, Inc. is hereby denied. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 11th day of August, 1992.



STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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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 wastewater 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.