

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Adoption of Numeric )  
Conservation Goals and )  
Consideration of National Energy )  
Policy Act Standards (Section )  
111) )  
KISSIMMEE UTILITY AUTHORITY ) DOCKET NO. 930555-EG  
CITY OF LAKE LAND ) DOCKET NO. 930556-EG  
CITY OF VERO BEACH ) DOCKET NO. 940828-EG  
) )  
) ORDER NO. PSC-94-1349-FOF-EG  
) ISSUED: November 3, 1994

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The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
JOE GARCIA  
DIANE K. KIESLING

ORDER DENYING MOTION FOR RECONSIDERATION

On September 9, 1994, the Kissimmee Utility Authority, the City of Lakeland and the City of Vero Beach (the utilities) each timely filed a Motion for Reconsideration of Order No. PSC-94-1082-PCO-EG (Order Establishing Procedure), issued September 2, 1994.

The motions ask that the filing of the utilities' Cost Effectiveness Goals Results Reports (CEGRR) be delayed until February 28, 1995; that the schedule be revised to accommodate this delay; that the utility be permitted additional time for the filing of rebuttal testimony; and that any consideration by the Commission of the adoption of the standards for Integrated Resource Planning found in Section 111 of the Energy Policy Act of 1992 be eliminated. By Revised Order Establishing Procedure, Order No. PSC-94-1294-PCO-EG, issued October 18, 1994, the prehearing officer addressed the issue of an extension of time for filing rebuttal testimony and extended said filing date until March 4, 1995.

On July 19, 1994, the utilities each filed a Motion to Eliminate TMPRR Filing Requirement, Extend Time for Filing CEGRR, and Continue Final Hearing. By Order No. PSC-94-1085-PCO-EG, issued September 2, 1994, the Commission granted the requests to eliminate the Technical Market Potential Results Report (TMMPR) filing requirement and extended the time to file the Cost Effectiveness Goals Results Report (CEGRR) to December 23, 1994,

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consistent with Order Establishing Procedure, Order No. PSC-94-1082-PCO-EG, issued September 2, 1994. The final hearing in this and other related dockets was moved from December, 1994 to April, 1995 to accommodate the utilities' requests for additional time. The utilities apparently were unaware of Order No. PSC-94-1082-PCO-EG when they filed their respective motions for reconsideration.

Order No. PSC-94-1082-PCO-EG provided the abbreviated list of programs to be evaluated by the cooperatives. This order, at page 3, expresses the basis for the list of measures to be evaluated:

Representatives of the municipal and cooperative electric utilities have stated that there are substantial differences between municipal and cooperative utilities and the investor-owned utilities with respect to: purchased power/power supply arrangements; avoided cost; rate structure; pricing; load characteristics; cost of capital; and other considerations. Thus, evaluating a more abbreviated list of the most cost-effective programs for the IOU's might eliminate many potential viable measures from consideration in these dockets....

The crux of the utilities' arguments with respect to the schedule are based on the alleged inability to complete the CEGRR in anything less than a six month period. We are unaware of any reason (nor do the motions indicate) why this amount of time is required, especially since much of the groundwork has been done by other entities in the investor-owned utility goals dockets. While each investor-owned utility's process for evaluating the Demand Side Management measures (and submitting its CEGRR) was different, there were many general similarities applicable to the municipal utilities.

The purpose of a motion for reconsideration is to bring to the attention of the Commission some factual matter or point of law which was overlooked, or which it failed to consider when it rendered the order in the first instance. See Diamond Cab Co. vs. King, 146 So. 2d 889 (FLA. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. DCA 1981). This motion for reconsideration does not present any arguments not already taken into consideration by the prehearing officer in Order No. PSC-94-1085-PCO-EG where she extended the time to file the CEGRR to December 23, 1994. This was consistent with Order No. PSC-94-1082-PCO-EG, where she also

extended the hearing dates to April, 1995 in order to accommodate the parties. Therefore, we deny the Motions for Reconsideration to extend date to file CEGRR.

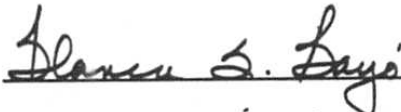
We recognize that the list of programs to be evaluated is not as short as some of the utilities would like. In the interest of conserving the resources of parties and the Commission, we suggest that our staff and the utilities meet to see if certain programs which show no promise of being cost effective may be removed from the list. The reduced list may be brought to the prehearing officer for final approval or modification. The list as shown in Order No. PSC-94-1082-PCO-EG shall be controlling unless or until revised by the prehearing officer.

The parties did advance certain legal arguments suggesting the Commission lacks statutory authority to address a particular matter as set forth in the Order Establishing Procedure as it relates to municipals and electric cooperatives. The matter in question relates to "determinations relative to the adoption for these utilities of the Integrated Resource Planning and Investments in Conservation and Demand Management standards set out in Section 111 of the Energy Policy Act of 1992." This argument does not relate to Florida Public Utilities Company, a public utility which is also a party to this proceeding and is subject to the jurisdiction of the Commission with respect to the Section 111 EPACT Standards.

If the Commission does not have the statutory authority to make these determinations as to municipals and electric cooperatives, it lacks subject matter jurisdiction. The question of jurisdiction is a legal issue with broad ramifications. Order No. PSC-94-1082-PCO-EG was a procedural order setting forth the matters to be considered and the dates governing the hearing process. We do not believe that a motion for reconsideration of a procedural order is the proper vehicle by which to address the subject of jurisdiction. It would be more appropriate for the parties to file motions to strike, together with legal briefs. Accordingly, the Motion for Reconsideration is denied.

ORDERED by the Florida Public Service Commission that the Motions for Reconsideration filed by the Kissimmee Utility Authority, the City of Lakeland, and the City of Vero Beach are denied.

By ORDER of the Florida Public Service Commission, this  
3rd day of November, 1994.



BLANCA S. BAYÓ, Director  
Division of Records and 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.

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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, 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.