

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a staff-) assisted rate case in Alachua) County by LANDIS ENTERPRISES,) INC.)	DOCKET NO. 940973-WU
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In Re: Application for a staff-) assisted rate case in Putnam) County by LANDIS ENTERPRISES,) INC.)	DOCKET NO. 940974-WU
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In Re: Application for a staff-) assisted rate case in Volusia) County by PINE ISLAND UTILITY) CORPORATION.)	DOCKET NO. 940982-WS
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In Re: Application for a staff-) assisted rate case in Lee County) by L.C.M. SEWER AUTHORITY, INC.)	DOCKET NO. 940983-SU ORDER NO. PSC-95-0238-FOF-WS ISSUED: February 21, 1995

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING PETITION FOR RECONSIDERATION
OR ALTERNATIVELY FOR A FORMAL ADMINISTRATIVE HEARING

BY THE COMMISSION:

BACKGROUND

On September 14, 1994, Water Spectrum Inc. (WSI or the petitioner), on behalf of Landis Enterprises, Inc., Pine Island Utility Corporation (Pine Island), and L.C.M. Sewer Authority, Inc. (L.C.M.), applied for four separate staff-assisted rate cases, one for each of the following utilities: Lake Alto Water System (Lake Alto), Port Buena Vista Water System (PBV), Pine Island, and L.C.M. In addition, WSI requested a payment plan for the staff-assisted rate case filing fees and delinquent regulatory assessment fees, and a waiver of all penalties and interest for non-payment of delinquent regulatory assessment fees.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On November 29, 1994, the Commission issued three Orders resolving issues presented by these staff-assisted rate cases. By Order No. PSC-94-1462-FOF-SU, the Commission denied L.C.M.'s staff-assisted rate case application and request for payment plan and waiver, and closed the docket. By Order No. PSC-94-1463-FOF-WS, the Commission held the Pine Island staff-assisted rate case in abeyance for 30 days, and conditioned the continuance of the staff-assisted rate case, as well as WSI's request for a payment plan and waiver, upon Pine Island's full compliance with Order No. PSC-94-0449-FOF-WS, issued April 14, 1994, by December 8, 1994. In addition, Order No. PSC-94-1463-FOF-WS required Pine Island to show cause why it should not be fined for failing to comply with Order No. PSC-94-0449-FOF-WS. By Order No. PSC-94-1464-FOF-WU, the Commission approved a payment plan for staff-assisted rate case filing fees and regulatory assessment fees, and denied the waiver of penalties and interest for Lake Alto and PBV.

On December 8, 1994, the Commission received a Petition for Reconsideration or Alternatively for a Formal Administrative Hearing of Orders Nos. PSC-94-1462-FOF-SU, PSC-94-1463-FOF-WS, and PSC-94-1464-FOF-WU, issued November 29, 1994, regarding the above-captioned dockets.

PETITION FOR RECONSIDERATION

Rule 25-22.060, Florida Administrative Code, permits a party who is adversely affected by Commission order to file a motion for reconsideration of that order. The purpose of a motion for reconsideration is to bring to an agency's attention a point of fact or law that was overlooked or that the agency failed to consider when it rendered its order. Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962). The petitioner has not shown that the Commission has overlooked any point of fact or law requiring reconsideration of the above-mentioned orders.

The petitioner raised the following points in its petition:

- 1) The petitioner argues that WSI should not be required to pay penalties and interest on delinquent regulatory assessment fees because it does not have the money to pay due to "grossly inadequate rates".
- 2) The petitioner argues that the Commission should not have ordered that the continued processing of the above-captioned staff-assisted rate cases be contingent upon WSI's timely payments of outstanding filing and regulatory assessment fees.

- 3) The petitioner argues that the Commission should not have ordered that final rates in the above-captioned staff-assisted rate cases would not be implemented until the staff-assisted rate case application fees were paid in full.
- 4) The petitioner argues that the above-mentioned orders may be contrary to Section 367.081(2)(a), Florida Statutes, which states in part:

The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory.

The petitioner asserts that "the [Commission's] edicts and inaction to address immediate relief are neither just nor fair, and constitute confiscatory action."

- 5) The petitioner argues that the Commission's requirement of seeking rate relief through a staff-assisted rate case ignores the Commission's authority provided under Section 367.081(2)(a), Florida Statutes, to fix rates upon its own motion.
- 6) The petitioner argues that it should not be required to comply with the requirement of Order No. PSC-94-0449-FOF-WS that WSI take the necessary steps to obtain a Department of Environmental Protection sewer permit for Pine Island. First, the petitioner argues that WSI does not have the funds to comply. Second, the petitioner argues that the court order appointing WSI as the receiver of Pine Island does not legally compel WSI to pay for the permit on behalf of Pine Island.
- 7) The petitioner argues that recent Commission mandates regarding Pine Island violate the receivership order. The petitioner asserts that WSI is not responsible for the substandard condition of the utility's components.
- 8) The petitioner argues that L.C.M. does not have the revenues to pay past due regulatory assessment fees and the penalties and interest associated therewith.

The petitioner's motion does not state that the Commission failed to consider any point of law or fact. The petitioner's motion reiterates the position that the petitioner presented during the November 8, 1994, agenda conference. The petitioner is merely attempting to re-argue each case. A motion for reconsideration is not a device to be used by the losing party to re-argue a case. Diamond Cab, 146 So.2d at 891. Therefore, we hereby deny WSI's Petition for Reconsideration of Orders Nos. PSC-94-1462-FOF-SU, PSC-94-1463-FOF-WS, and PSC-94-1464-FOF-WU.

ALTERNATIVE PETITION FOR A FORMAL ADMINISTRATIVE HEARING

Alternatively, the petitioner requested a formal administrative hearing for the three separate orders mentioned above. The alternative pleading is effectively the same as the primary pleading. Section 120.59(4), Florida Statutes, requires the Commission 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. The Commission gave petitioner proper notice in each of the three orders petitioned. Any party adversely affected by the Commission's final action in a matter may request: 1) reconsideration of the decision by filing a motion for reconsideration within fifteen (15) days of the issuance of the order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal under the proper procedure and filing a copy of the notice of appeal and the filing fee with the appropriate court. The petitioner followed the former route of relief in his filing. Seeking an administrative hearing in this situation is equivalent to a motion for reconsideration. Therefore, there is no difference between the petitioner's primary pleading for reconsideration and alternative pleading for a formal administrative hearing. We reach the same conclusion with the alternative pleading as with the primary pleading, and hereby deny WSI's Alternative Petition for a Formal Administrative Hearing.

We find it appropriate to keep Dockets Nos. 940973-WU, 940974-WU, and 940982-WS open pending final disposition of the respective staff-assisted rate case applications. However, Docket No. 940983-SU shall be closed in compliance with Order No. PSC-94-1462-FOF-SU.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Water Spectrum, Inc.'s Petition for Reconsideration is denied. It is further

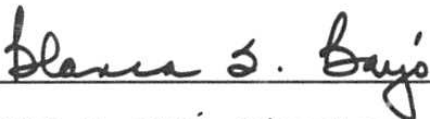
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ORDERED that Water Spectrum Inc.'s Alternative Petition for a Formal Administrative Hearing is denied. It is further

ORDERED that Dockets Nos. 940973-WU, 940974-WU, and 940982-WS shall remain open pending final disposition of the respective staff-assisted rate case applications. It is further

ORDERED that Docket No. 940983-SU is hereby closed in compliance with Order No. PSC-94-1462-FOF-SU.

By ORDER of the Florida Public Service Commission, this 21st day of February, 1995.



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 and/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.