BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a rate increase in Duval County by ORTEGA UTILITY COMPANY.	) DOCKET NO. 940847-WS) ORDER NO. PSC-95-0873-FOF-WS) ISSUED: July 18, 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 MOTION FOR RECONSIDERATION OF ORDER NO. PSC-95-0573-FOF-WS

BY THE COMMISSION:

BACKGROUND

Ortega Utility Company (Ortega or utility) is a Class B water and wastewater utility providing service for approximately 1,342 water and 1,211 wastewater customers in Duval County. The utility is contained within the St. Johns River Water Management District which is a critical use area. For the test year ended June 30, 1994, the utility reports water operating revenues of $528,199 and wastewater operating revenues of $726,091.

The Commission last established rates for this utility in a limited proceeding in Docket No. 911168-WS. Order No. PSC-92-0633-FOF-WS, issued July 8, 1992, addressed the utility's petition for emergency and permanent rate relief as well as the interconnection of the Herlong water and wastewater systems with the City of Jacksonville. The last full rate proceeding was held in Docket No. 871262-WS, and the final order, Order No. 21137, was issued on April 27, 1989.

On December 21, 1994, the utility filed an application for approval of interim and permanent rate increases pursuant to Sections 367.081(2), 367.081(3) and 367.082, Florida Statutes. The utility did not satisfy the Minimum Filing Requirements (MFRs) and a letter was sent to the utility notifying it of its deficiencies on January 5, 1995. On February 20, 1995, the utility satisfied the MFRs and this date was designated as the official filing date.

By Order No. PSC-95-0573-FOF-WS, issued May 9, 1995, we denied interim water rates and granted interim wastewater rates. Within the Order, we also denied consideration of Ortega's Suggestion of Error. The Suggestion of Error questioned Commission policy and methodology in calculating interim rates. We stated that differences of opinion as to policy should not be done through a Suggestion of Error. However, we stated that if a utility believes that the Commission made a mistake of law or fact, then it should file a motion for reconsideration. On May 17, 1995, Ortega timely filed a Motion for Reconsideration of Order No. PSC-95-0573-FOF-WS.

MOTION FOR RECONSIDERATION

In its motion, Ortega alleges that we did not properly apply our statutes and rules when denying Ortega interim water rates and not granting fair and reasonable interim wastewater rates. Specifically, Ortega requested that the Commission: (1) grant Ortega working capital based on one-eighth of operation and maintenance (O&M) expenses; (2) grant operating expenses (depreciation and pro forma) as requested in the motion; (3) set interim rates using a return of equity of 14.35%, with a range of 13.35% to 15.35%, resulting in an overall rate of return of 11.85 to 12.37%; and (4) allow the utility to utilize a corporate undertaking to secure the refund.

The purpose of a motion for reconsideration is to point out some matter of law or fact which the Commission failed to consider or overlooked in its prior decision. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (1st DCA 1981). A motion for reconsideration is not an appropriate vehicle for mere reargument or to introduce new evidence or arguments which were not previously considered. We used this standard in our analysis and each point raised by Ortega is set forth below.

Working Capital

In its motion, Ortega requested that the Commission grant working capital based on the formula method (one-eighth of O&M expenses). In Order No. PSC-95-0573-FOF-WS, we used the balance sheet method, resulting in a zero working capital allowance. Ortega averred that we should have used Rule 25-30.433(2), Florida Administrative Code, in granting O&M expenses. This Rule states that working capital for Class B utilities shall be calculated using one-eighth of O&M expenses. Further, Ortega stated that we incorrectly implemented Section 367.082(5)(b), Florida Statutes, by interpreting the term "appropriate adjustments consistent with" to mean "adjustments identical to." Ortega further argued that when

we did not use Rule 25-30.433(2), Florida Administrative Code, we did not allow Ortega adequate funds to meet its current operating expenses.

Basically, Ortega asserted that we made a mistake of law. However, Ortega's argument is flawed in several respects and does not amount to an adequate demonstration which meets the Diamond Cab standard. First, Section 367.082(5)(b)(1), Florida Statutes, states that the achieved rate of return shall be calculated by applying appropriate adjustments consistent with those used in the most recent rate proceeding. In this case, the last rate proceeding in which Ortega's working capital was calculated was in Order No. 21137, its last file and suspend rate case. By that Order, we calculated working capital using the balance sheet approach. Therefore, calculating working capital using the balance sheet approach in this case for purposes of calculating interim is consistent with the interim statute. Accordingly, we find that no mistake of law has been made in that regard.

Second, Ortega cited to Rule 25-30.433(2), Florida Administrative Code, and stated that we should have applied that rule in calculating working capital. Although Ortega correctly stated the Rule, it is not applicable in this case. The only instances in which Rule 25-30.433(2), Florida Administrative Code, would have been applied are if Ortega never had a rate proceeding, or was a newly certificated utility. Accordingly, Rule 25-30.433(2), Florida Administrative Code, is used to calculate working capital in those situations, but not in this case. Consequently, no mistake of law has been made in this regard either.

Adjustment to Restore Depreciation

Ortega next asserted in its motion that an adjustment to restore depreciation is necessary. Ortega argues that the adjustment was warranted because the rate tariffs imposed by the Commission in prior years resulted in revenues which were insufficient to cover expenses, particularly depreciation. Disallowing this adjustment, according to Ortega, would result in taking of property without just compensation and impair the ability of Ortega to collect sufficient rates.

In its filing, the utility included a wastewater adjustment to restore unrecovered depreciation accumulated since its last rate case. By Order No. PSC-95-0573-FOF-WS, we removed this adjustment from rate base. Section 367.082(5)(b)(1), Florida Statutes, states:

> the achieved rate of return shall be calculated by applying appropriate adjustments consistent with those which were used in the most recent individual rate proceeding of the utility or ... and annualizing any rate changes occurring during such period (emphasis added).

Our removal of the adjustment was consistent with the interim statute. First, Ortega's depreciation adjustment did not occur in its test year, the twelve month period ended June 30, 1994. Second, the adjustment was not made in either of the utility's prior rate proceedings: the rate case, nor the limited proceeding. As such, we find that we did not make a mistake of law or fact in our decision on this issue.

Pro Forma Adjustments

Ortega's next assertions related to allowance of pro forma operating expense adjustments to the test year. These relate specifically to rate case, O&M, and depreciation expenses. We will address these adjustments separately.

Rate Case Expense

By Order No. PSC-95-0573-FOF-WS, we included only the amount of rate case expense allowed in the limited proceeding, which was $2,208 for the water system. The utility argued that this allowance was based on a mistake or misapprehension of law or fact regarding rate case expense. Ortega argued that we should have referred back to the last rate case, not the limited proceeding when calculating rate case expense. Additionally, Ortega asserted that disallowing the requested rate case expense is confiscatory and contrary to law. In the utility's opinion, the rate case expense included in its MFRs is an appropriate adjustment consistent with "the last comparable rate case."

Section 367.082(5)(b)(1), Florida Statutes, states that the Commission shall use the historical test year and adjustments consistent with the last rate proceeding (emphasis added). The statute is clear in that it specifically contains the term "proceeding" which does not limit the applicability of the statute to just a file and suspend, or a proposed agency action rate case. The legislature has clearly recognized that a limited proceeding is a separate kind of rate proceeding available to utilities. Ortega's last rate proceeding was, in fact, the limited proceeding docket. In that docket, by Order No. PSC-92-0633-FOF-WS, we allowed $2,208 for the water system in rate case expense. It should be noted that

if Ortega never filed the limited proceeding and we had to use the last rate case to calculate rate case expense for interim purposes in this docket, that amount would not have been allowed since the last rate case order was issued over five years ago, well beyond the four-year amortization period for rate case expense. Based on the foregoing, we find that we have made no mistake of law or fact.

Certain Pro Forma O&M Expenses

In its MFRs, Ortega included numerous pro forma adjustments to O&M expenses. By Order No. PSC-95-0573-FOF-WS, we removed all pro forma adjustments in calculating interim rates. When determining whether to grant pro forma adjustments in interim rates, we must look at the test year chosen. In this docket, Ortega opted to use a historical test year, ended June 30, 1994. We have consistently interpreted the achieved rate of return, as used in Section 367.082(5)(b)(1), Florida Statutes, to mean actual expenses incurred, with adjustments made consistent with a utility's last rate proceeding. Section 367.082(1), Florida Statutes, provides that upon request by a utility, the Commission may use a projected test year. In this case, the utility did not make such a request. As such, we did not make a mistake of law or fact when we removed these pro forma expense adjustments.

Depreciation Expense

Additionally, Ortega stated that depreciation expense should not have been excluded. In its motion, Ortega stated that the utility computed its test year depreciation and contributions in aid of construction (CIAC) amortization based on the average plant in service and average CIAC balances as reflected on scheduled B-13 and B-14 of its MFRs. Ortega further mentioned that these schedules are consistent with Commission guidelines and clearly give *prima facie* evidence to support Ortega's calculation of depreciation expense. Ortega cited Order No. PSC-94-1237-FOF-WU, issued October 11, 1994, granting interim rates to Florida Cities Water Company, Barefoot Bay Division (Florida Cities), as evidence that the Commission has accepted this method of documenting depreciation in the MFRs for purposes of interim rates. Further, Ortega stated that we should have reviewed its past annual reports and the staff audit review to support Ortega's MFRs.

Section 367.082, Florida Statutes, states that the utility must establish a *prima facie* entitlement for interim relief. In our opinion, as clearly stated in Order No. PSC-95-0573-FOF-WS, Ortega did not meet the *prima facie* standard and never supported the necessity of the requested depreciation expense. Specifically, the Order stated that "the utility has provided no explanation for

these adjustments." Upon review of Ortega's MFRs, we could not determine whether the utility was making a correction of an error, changing depreciation rates or calculating the average balance of depreciation expense. For interim purposes, we cannot review anything other than the utility's original filing. In the Florida Cities case, the MFRs clearly explained why depreciation expense was being adjusted. For these reasons, the Ortega rate case filing can be distinguished from Florida Cities' rate case. Upon consideration of the facts stated above, it is apparent that the we did not overlook nor make a mistake of fact or law in this regard.

Return on Equity

By Order No. PSC-95-0573-FOF-WS, Ortega was granted an 11.32% rate of return in wastewater rates. In its motion, Ortega disputed this return on equity. Specifically, Ortega asserted that we did not set wastewater interim rates using the minimum rate of return on equity of 13.35%, authorized by Ortega's last rate case. Ortega claimed that we calculated this percentage because Ortega requested use of the current leverage graph to calculate revenues, or 11.34%, to calculate the interim cost of equity. Ortega argued that it made that request based on the fact that it thought it would receive adjustments for pro forma expenses and a working capital allowance. Ortega averred that if it was known that we would not grant these expenses, it would not have requested a return on equity less than established in its last rate proceeding. Ortega stated that in setting interim rates, any rate of return used which is below the authorized minimum previously approved by the Commission must, of necessity, be unfair, unjust, unreasonable, and insufficient. Southern Bell Telephone & Telegraph Co. v. Bevis, 279 So. 2d 285 (Fla. 1973).

In Order No. PSC-95-0573-FOF-WS, we fully considered the points raised by Ortega regarding the return on equity. Specifically, page 7 of the Order states:

> In the utility's last rate proceeding, the Commission established a return on equity of 14.35%, with a range of 13.35% to 15.35%. Consistent with the interim statute, the cost of capital used for interim rates shall be the minimum of the range of the last authorized return on equity. As the utility did not request separate calculations for interim and final, it used the current leverage graph to calculate revenues. Since the requested cost of equity is less than what the statute would allow we used the cost rate requested. This treatment has been consistently applied by the Commission in interim rate proceedings. See Orders Nos. PSC-94-

> 1237-FOF-WU and PSC-93-1174-FOF-SU, issued October 11, 1994, and August 10, 1993, respectively. As such, we find it appropriate that 11.34% be used to calculate the interim cost of equity.

Reading this part of the Order makes it abundantly clear that we fully considered the utility's request for a lower return on equity than the statute would allow, cited precedent, and fully justified our decision. With that, we believe that Ortega now cannot merely attempt to raise an argument simply because it does not agree with the Order. As stated earlier, reargument is not appropriate for reconsideration. Consequently, no mistake of fact or law has been made.

Corporate Undertaking

In its motion, Ortega stated that we should have allowed it to utilize a corporate undertaking as an appropriate security. Ortega claims that since it has been serving the public for the last 30 years, with the last 20 under Commission regulation, there should be no question that a corporate undertaking would be sufficient security. Additionally, Ortega raised a question that if the utility is overearning, how could it not utilize a corporate undertaking.

Although we found a potential overearning situation for the water system by Order No. PSC-0573-FOF-WS, when determining if a utility can support a corporate undertaking we look at the total company, not at each system. The criteria in determining if a utility can support a corporate undertaking includes whether it has sufficient liquidity, profitability, and equity capitalization. It has been our practice to grant a corporate undertaking if a utility meets two of the three criteria. We analyzed Ortega's 1991, 1992, and 1993 annual reports to determine if the utility could support a corporate undertaking. During those years, Ortega's annual reports showed a combined net loss of $24,757, $15,546, and $93,596, respectively. Further, the utility has not shown sufficient liquidity. To calculate liquidity, we divide the utility's current assets by its current liabilities. For a utility to show proper liquidity, the ratio should be about 1.00. Ortega's liquidity for these three years were 0.33, 0.19, and 0.24 respectively. Finally, a utility must show appropriate equity capitalization. Equity capitalization is determined by dividing a utility's total equity by its total investor capital. In order for a utility to support a corporate undertaking, this percentage should be around 35%. Ortega's equity capitalization for 1991 through 1993 has been 24%, 25%, and 24% respectively. Finally, our decision with respect to the corporate undertaking cannot be made

based on how long a utility has been in existence. Regardless of the length of its existence, a utility may not be managing its resources properly. Therefore, Ortega has not shown that we made a mistake of law or fact when determining if Ortega could support a corporate undertaking.

In conclusion, we find that Ortega has not adequately met the Diamond Cab standard on each point raised in its motion. Accordingly, Ortega's Motion for Reconsideration of Order No. PSC-95-0573-FOF-WS, is hereby denied.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Ortega Utility Company's Motion for Reconsideration of Order No. PSC-95-0573-FOF-WS, is hereby denied. It is further

Ordered that this docket shall remain open pending final disposition of this case.

By ORDER of the Florida Public Service Commission, this 18th day of July, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR 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 this order, which is intermediate in nature, 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. Citizens of the State of Florida v. Mayo, 316 So.2d 262 (Fla. 1975), states that an order on interim rates is not final nor reviewable until a final order is issued. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.