

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a rate) DOCKET NO. 940847-WS
increase in Duval County by) ORDER NO. PSC-95-1163-FOF-WS
ORTEGA UTILITY COMPANY.) ISSUED: September 19, 1995

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING ORAL ARGUMENT AND MOTION FOR RECONSIDERATION

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.

On December 21, 1994, the utility filed an application for approval of interim and permanent rate increases. Order No. PSC-95-0573-FOF-WS, issued May 9, 1995, denied interim water rates. Within the Order, we also denied consideration of Ortega's Suggestion of Error. On May 18, 1995, Ortega timely filed a Motion for Reconsideration of Order No. PSC-95-0573-FOF-WS. Ortega's motion was denied by Order No. PSC-95-0873-FOF-WS, issued July 18, 1995.

On June 30, 1995, Ortega filed its prehearing statement. In its statement, Ortega included an issue on whether the Commission complied with applicable legal requirements regarding its consideration of interim rates. On July 6, 1995, a prehearing conference was held before the prehearing officer. After hearing the utility's argument pertaining to the relevance of this issue, the prehearing officer struck the issue from the Prehearing Order. Subsequently, on July 14, 1995, Order No. PSC-95-0839-PHO-WS was issued identifying the relevant issues, witnesses, and exhibits.

DOCUMENT NO. 95-1163-DATE

09215 SEP 19 95

FPSC-REGULATORY REPORTING

An evidentiary hearing was held in Jacksonville, Florida on July 20-21, 1995. The recommendation on the issues addressed at the hearing is scheduled to be considered at the October 10, 1995, agenda conference. On July 24, 1995, Ortega timely filed a Motion for Reconsideration of Order No. PSC-95-0839-PHO-WS, and a request for oral argument.

ORAL ARGUMENT

Ortega's request for oral argument states that it would aid the Commission in evaluating important procedural issues regarding interim rates. However, we do not believe that Ortega's motion requires oral argument because the motion contains sufficient argument for us to render a fair and complete evaluation of the merits without oral argument. Therefore, Ortega's request for oral argument is hereby denied.

MOTION FOR RECONSIDERATION

In its motion, Ortega asserts that the prehearing officer erred when she struck an issue which was included in its prehearing statement. The issue stated, "Did the Commission comply with applicable legal requirements regarding its consideration of interim rates in this proceeding?" After hearing the utility's and staff's positions, the prehearing officer deleted the issue from the prehearing order.

In its motion, Ortega states that interim awards are reviewable only after final action by the Commission. Maule Industries, Inc. v. Mayo, 342 So.2d 63 (Fla. 1977). Further, Ortega states that the intention of including that issue in the hearing was to create a record and preserve it for appeal.

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.

Ortega restates the same argument, in its motion, that it made at the prehearing conference. On page 31 of the prehearing conference transcript, Ortega stated that it is basic case law, for at least 20 years, that interim awards are reviewable only after final action. Ortega also stated the Maule decision in its argument. Furthermore, on the same page of the transcript, Ortega

asserted that "I also think that this utility is entitled to some opportunity to create a record . . ."

In response to Ortega's argument, staff posited that Ortega already created a record for appeal on this issue, as the actual order which denied interim is part of the record. Section 120.57(1)(b)(6)(a), Florida Statutes, states that the part of the record shall consist of all motions and intermediate rulings.

After listening to all points raised by Ortega, we find that the prehearing officer fully considered the issue and ruled that it would be stricken from the prehearing order.

Based on the foregoing, we find that Ortega did not raise any mistake of law or fact which the prehearing officer failed to consider or overlook when striking the issue in question. Rather, Ortega is merely rearguing its position through its motion. Therefore, because a motion for reconsideration is not an appropriate vehicle for reargument, Ortega's motion for reconsideration is hereby denied.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Ortega Utility Company's request for oral argument is hereby denied. It is further

ORDERED that Ortega Utility Company's Motion for Reconsideration of Order No. PSC-95-0839-PHO-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 19th day of September, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

MSN

ORDER NO. PSC-95-1163-FOF-WS
DOCKET NO. 940847-WS
PAGE 4

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.