BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of CONTINENTAL COUNTRY CLUB, INC. for rate increase in Sumter County.	) DOCKET NO. 881178-WS) ORDER NO. 22308) ISSUED: 12-12-89	

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
GERALD L. GUNTER

ORDER DENYING PUBLIC COUNSEL'S MOTION FOR RECONSIDERATION AND CLOSING DOCKET

BY THE COMMISSION:

On August 4, 1989, we issued Order No. 21680, entitled Final Order Setting Rates and Charges, Establishing Service Availability Policy and Charges, Miscellaneous Service Charges, and Meter Installation Charges, and Releasing Escrow Account Containing Interim Service Availability Charges, in this matter. On August 21, 1989, the Public Counsel filed a timely Motion for Reconsideration (the Motion) of Order No. 21680 on four specific points. The four issues raised by Public Counsel are: 1) Should this Commission reconsider its decision not to include post-1982 contributions-in-aid-of-construction (CIAC) in the rate base for Continental Country Club, Inc. (Continental or the Utility)?; 2) Should this Commission reconsider its approval of the use of the one-eighth formula to calculate the working capital requirements for this Utility?; 3) Should this Commission reconsider its Order regarding the potential for double billing for utility services by this Utility?; and 4) Should this Commission reconsider the gallonage estimate for the water and wastewater billing analysis it used for determining this Utility's rates because the gallonage estimate used was inconsistent? On October 13, 1989, we heard oral argument by the parties on this Motion.

In ruling on the Public Counsel's Motion, we have applied the legal standard for a motion for reconsideration which is set forth in Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962). In that case, involving this Commission when it was named the Railroad and Public Utilities Commission, the Court stated, as follows:

> The purpose of a petition for rehearing is merely to bring to the attention of the trial court or, in this instance, the administrative agency, some point it overlooked or failed to consider when it rendered its order in the first instance. Hollywood Inc. v. Clark, 153 Fla. 501, 509,, 15 So.2d 175; Maule Industries, Inc. v. Seminole Rock and Sand Company, Fla. 91 So.2d 307. It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order.

We find that the Public Counsel's Motion has not raised any point that we failed to consider or overlooked when we issued Order No. 21680. In fact, it appears that Public Counsel simply wishes to reargue these issues. We will discuss each of the four points below.

I. Should this Commission reconsider its decision not to include post-1982 CIAC in the rate base for this Utility?

The Public Counsel has asked us to reconsider the level of CIAC we approved for the rate base of this Utility. Public Counsel contends that we failed to consider the meaning of service availability clauses in the homeowners' sales contracts and warranty deeds, thereby understating CIAC contrary to Section 367.081(2), Florida Statutes. Public Counsel contends that the court decisions respecting collection of maintenance fees provide evidence of cash contributions (CIAC) since they disallowed recovery of depreciation, interest, and profit. Public Counsel argues that Continental received money from lot purchasers in return for a promise to provide future utility service. Public Counsel further contends that customer testimony clearly reveals that the Utility received money to assure the availability of future service. In essence, Public Counsel contends that some or all of the cost of plant construction was recovered from lot purchasers and, thus, it should be considered CIAC.

Based upon our consideration of customer testimony, the purchase contracts, and deed restrictions, we find that we did

not misapprehend any of the evidence in this case in our determination of CIAC for the rate base calculation. The Public Counsel has not presented any new evidence nor pointed out any argument that we failed to consider in our decision in Order No. 21680 on the issue of whether the homeowners' contracts should be considered CIAC. Therefore, we find that the decision we have rendered shall stand.

If we are not persuaded that the Utility system should be considered wholly contributed, Public Counsel contends that the imputation of CIAC must be increased due to the Utility's failure to submit evidence as to the appropriate level of CIAC pursuant to Rule 25-30.570, Florida Administrative Code. In its original application, the Utility included a provision for imputed CIAC based upon Witness Mr. George MacFarlane's testimony that he was unsure about the tax and financial accounting treatment prior to assumption of ownership by Mr. Donald Freeman during 1982. Because such tax information was unavailable, Witness MacFarlane testified that he imputed CIAC to the extent that distribution, collection, and transmission facilities could have been charged to cost of sales for lots sold prior to Mr. Freeman's ownership. He further testified that, thereafter, plant construction costs were capitalized for book and tax reporting purposes and, therefore, additional CIAC was not imputed.

Public Counsel contends that the Utility has failed to submit evidence as to the appropriate amount of CIAC because Witness MacFarlane responded, when asked to indicate whether a depreciation charge appeared on a particular line on a particular tax schedule, that no depreciation charge appeared on that line for any of the subject years. Public Counsel does not believe that Witness MacFarlane's reference to a different provision for depreciation on the tax schedule offers any assurance that plant construction costs were capitalized. Therefore, Public Counsel asserts that additional CIAC should be imputed for distribution and collection costs incurred prior to Mr. Freeman's ownership. Public Counsel Witness Effron testified that imputation of CIAC should continue for lots sold after 1982 based upon their pro rata share of distribution and collection costs incurred before Mr. Freeman's period of ownership. Witness Effron did not recommend that CIAC should be imputed for construction costs incurred during Mr. Freeman's ownership or afterwards.

As we stated in our Order, during his cross-examination, Mr. MacFarlane testified again that, after 1982, Continental did not deduct the cost of utility improvements as a cost of goods sold for tax purposes, but that the system was being depreciated. In rebuttal testimony, Mr. MacFarlane disagreed with Mr. Effron's proposal to impute additional CIAC because "(t)he tax returns of Continental Country Club, Inc. prove that the system was capitalized under Freeman's ownership and depreciated for tax purposes ".

We found it appropriate that the imputation of CIAC cease upon Mr. Freeman's assumption of ownership based upon testimony by Witness MacFarlane that plant costs were capitalized during Mr. Freeman's ownership and afterwards. The inference that depreciation of Continental's utility assets could only appear on a single line on the tax schedule, specifically that relating to use of accelerated cost recovery rates for 15-year public utility property, is not sufficient to conclude that Mr. MacFarlane's sworn testimony that the construction costs were capitalized is untrue. Since Continental was, prior to Commission jurisdiction, not operating as a regulated public utility, but, in large measure, as a company offering a broad range of services to park residents, it is not certain that 15-year ACRS rates would apply in Continental's specific case. Therefore, we find it appropriate to deny Public Counsel's Motion on this issue.

II. Should this Commission reconsider its approval of the use of the one-eighth formula to calculate the working capital requirements for this Utility?

Public Counsel contends that we misconstrued evidence in the record relating to the Utility's need for working capital and, by applying non-rule policy not explained in the record, we erred in application of the law. We disagree on both counts.

Public Counsel asserts that our decision was improperly and solely based on our intentions reflected in Order No. 21202. By that Order, which we issued May 8, 1989, we directed our Staff to initiate rulemaking regarding formal adoption of the formula approach for calculation of working capital for all water and sewer utilities. Our reference to Order No. 21202 was simply to illustrate how the formula approach could produce savings for ratepayers in this case and to point out that the Utility's

requested allowance did not include a separate provision for deferred rate case charges. However, there were other factors that supported our approval of the formula approach for the calculation of this Utility's working capital allowance.

In recent years, we have used the balance sheet approach for measurement of working capital, which approach compares the Utility's current and deferred assets and liabilities during the test year to yield the actual working capital condition during that period. It should be noted that this approach is also a matter of non-rule policy, and the record is devoid of expert testimony as to why this approach yields the only "correct" basis for presentation of a representative working capital allowance.

As we stated in Order No. 21680, we accepted Witness MacFarlane's testimony that the formula approach had previously been accepted in various ratesetting jurisdictions as a reasonable means of estimating working capital needs. He also testified that a balance sheet calculation or a lead lag study for measurement of working capital was "virtually impossible" for Continental due to its many unregulated activities. The Utility's application did, however, include a company-wide balance sheet which showed that, on average, current assets exceeded current liabilities by $1,127,438 in 1988. However, without further information as to what portions relate to unregulated activities, no meaningful "utility" working capital amount could be computed. Thus, without the benefit of a costly and difficult-to-prepare "utility-only" balance sheet measurement, we had to consider other evidence as to what would be a reasonable allowance for working capital.

Witness MacFarlane testified that because Continental pays its creditors in a timely manner and renders service before collecting its rates from customers, it was entitled to some provision for working capital. The Utility did not request a separate provision for deferred rate case charges, which measure alone would have exceeded its requested working capital allowance. If Continental had attempted a balance sheet calculation for working capital, one result would have been increased rate case charges, which would have increased the Utility's revenue requirement as an offsetting adjustment to any possible reduction to working capital, assuming that such a reduction would have materialized. Therefore, we find that we properly allowed a working capital amount using the formula

approach and we deny Public Counsel's Motion to reconsider our decision.

III. Should this Commission reconsider its Order regarding the potential for double billing for utility services by this Utility?

Public Counsel proposes that we order the Utility to reduce the level of maintenance fees (including garbage collection, lawn care, pool maintenance, street lighting, recreational and boat storage facilities, and water and wastewater service) to be collected by the amount that was charged at the time of issuance of the original certificate.

Our Order is very clear concerning the Utility's authorized rates for water and wastewater. There is no evidence that the Utility intends to collect anything other than the approved rates. We deny Public Counsel's Motion on this issue. We committed no error or omission regarding the Utility's approved rates. If the customers are concerned that they are being double billed for water or sewer service, there are several remedies available to them and this Commission to address such concerns, including an investigation or a formal customer complaint.

IV. Should this Commission reconsider the gallonage estimate for the water and wastewater billing analysis it used for determining this Utility's rates because the gallonage estimate used was inconsistent?

Public Counsel alleges that Witness MacFarlane testified that his calculation of wastewater gallonage, 3,500 gallons per month, was based upon a distribution of monthly water consumption with an average of 7,500 gallons per month and a wastewater cap of 6,000 gallons per month. Therefore, Public Counsel proposes that if we had appropriately adopted that 7,500 gallons per month water consumption figure, we would have increased the wastewater gallonage proportionately with water consumption resulting in a wastewater gallonage of 4,200 gallons per month. We find two errors in Public Counsel's analysis. One, Witness MacFarlane testified that he forgot to consider a cap for residential wastewater usage and, further, he testified that the 3,500 gallons per month was based on estimated

wastewater flows. However, a wastewater billing analysis is based on water usage, not wastewater flows. Therefore, although we utilized 3,500 gallons per month for wastewater, it was not based on the reasons offered by Witness MacFarlane. As we explained in Order No. 21680, we were persuaded that the Utility's proposed 3,500 gallons was a reasonable projection of the gallons for residential wastewater bills.

Second, Public Counsel alleges that the only evidence in the record is that water and wastewater gallonage vary directly and that wastewater consumption is a function of water consumption. We are unable to find that testimony in the record and, therefore, do not believe it to be a correct assumption because of the variables mentioned previously which affect a wastewater billing analysis, but not a water billing analysis. Public Counsel offered no testimony at hearing on this issue.

We find that there have been no errors or omissions in our findings regarding the gallonage for the wastewater billing analysis. Therefore, we deny Public Counsel's Motion on this issue.

Since no further action is required in this docket, it shall be closed upon issuance of this Order reflecting our disposition of Public Counsel's Motion.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Public Counsel's Motion for Reconsideration is hereby denied on all four issues. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 12th day of DECEMBER, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

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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 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 sewer 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.