

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 941121-WS
amendment of Certificates Nos.) ORDER NO. PSC-96-1403-FOF-WS
359-W and 290-S to add territory) ISSUED: November 20, 1996
in Broward County by SOUTH)
BROWARD UTILITY, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON

ORDER GRANTING STAY OF ORDER NO. PSC-96-1137-FOF-WS

BY THE COMMISSION:

BACKGROUND

On October 20, 1994, pursuant to Section 367.045, Florida Statutes, SBU applied for an amendment of its water and wastewater Certificates Nos. 359-W and 290-S to add additional territory in Broward County, in Docket No. 941121-WS. The proposed additional territory would consist of the "Carr Property" (97.95 acres) and "Imagination Farms" (900 acres). In its application, SBU stated that the property owners plan to create single-family developments, totalling 1,200 units within the two properties.

On November 17, 1994, the City of Sunrise (Sunrise or city) filed an objection to SBU's application and requested a formal hearing before this Commission pursuant to Section 120.57, Florida Statutes. On April 8-9, 1996, we held the technical hearing in Fort Lauderdale, Florida. By Final Order No. PSC-96-1137-FOF-WS, issued September 10, 1996, we granted SBU's amendment application.

On September 25, 1996, Sunrise filed a Motion for Reconsideration of the Final Order Amending Certificates Nos. 359-W and 290-S to Include Additional Territory. Along with its motion for reconsideration, Sunrise filed a Motion for Stay Pending Consideration of Reconsideration. On October 7, 1996, SBU timely served its response to Sunrise's motion for stay.

DOCUMENT NUMBER-DATE

12385 NOV 20 96

FPSC-RECORDS/REPORTING

MOTION FOR STAY

In its motion for stay, Sunrise states that granting a stay is in the public interest and will cause no prejudice to SBU. On October 7, 1996, SBU timely served its response to Sunrise's motion for stay.

In its response, SBU alleges that: 1) Rule 25-22.060(1)(c), Florida Administrative Code, provides that the filing of a motion for reconsideration of a final order does not automatically serve to stay the effectiveness of such final order; 2) the Commission has already decided that SBU's amendment application is in the public interest, and Sunrise's motion for stay fails to state grounds to support why a stay is in the public interest; 3) SBU will be prejudiced by a continued delay in its efforts to provide service to the Disputed Territory; and 4) Sunrise has failed to demonstrate that it is likely to suffer irreparable harm if the stay is not granted or that Sunrise is likely to prevail on its reconsideration.

We recognize that under Rule 25-22.060(1)(c), Florida Administrative Code, Sunrise's motion for reconsideration does not automatically serve to stay the final order in this docket. Further, Rule 25-22.061(2), Florida Administrative Code, provides that in determining whether to grant a motion to stay a final order pending judicial review, the Commission may, among other things, consider: 1) Whether the petitioner is likely to prevail on appeal; 2) whether the petitioner has determined that he is likely to suffer irreparable harm if the stay is not granted; and 3) whether the delay will cause substantial harm or be contrary to the public interest.

Although Sunrise has not indicated whether it intends to appeal the final order in this docket and has not indicated whether it is likely to suffer irreparable harm if the stay is not granted, we find it appropriate to grant the stay pending our consideration of Sunrise's motion for reconsideration. In our opinion, neither SBU nor the public will be harmed by a stay during that time. This docket shall remain open in order for us to make a determination regarding Sunrise's motion for reconsideration of Order No. PSC-96-1137-FOF-WS.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the City of Sunrise's Motion for Stay Pending Consideration of Motion for Reconsideration is hereby granted. It is further

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ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 20th
day of November, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

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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 preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.