BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of rates of SUNSHINE UTILITIES in Marion County for possible overearnings.	)	DOCKET NO. 881030-WU ORDER NO. 23354 ISSUED: 8/15/90

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
GERALD L. GUNTER

FINAL ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

We issued Order No. 22969, on May 23, 1990, requiring Sunshine Utilities to refund to its customers a portion of its revenues that we determined to be overearnings. The Utility, on June 1, 1990, filed a Motion for Reconsideration and a Request for Oral Argument. We granted the Utility oral argument which we heard on July 5, 1990.

The legal standard for granting a motion for reconsideration is set out in Diamond Cab Company of Miami v. King, 146 So.2d 889, 891 (Fla. 1962). In general, the movant must show that an error in law or fact has been made by this Commission.

The Utility's motion requests reconsideration of the portion of Order No. 22969 that corrected an error made by this Commission in Order No. 13014. The correction was to require the Utility to properly record the difference between the original cost study and the amount recorded on the Utility's books as contributions-in-aid-of-construction (CIAC). The record clearly supports that the Utility cannot prove that it has any investment in this $280,753 difference. The Utility also argued this issue at the July 5, 1990, oral argument. Neither the motion for reconsideration nor the oral argument contained any facts that we did not already consider in our decision set out in Order No. 22969. Therefore, we find it appropriate to deny the Utility's motion for reconsideration on this issue.

As part of Order No. 22969, we required a refund of overearnings for the period of August 30, 1988, through December 31, 1989. We ordered the Utility to refund 9.79% of its revenues during that period, but the amount to be refunded between August 30, 1988, to September 19, 1989, must be limited to 7.68% due to the insufficient amount of funds being held subject to refund. The Utility argues that the refund period should be only the twelve month period, August 30, 1988, through August 30, 1989, which is the period of time limited to the 7.68% refund amount. The Utility argues that the stipulation not to require a prospective reduction of rates, which was adopted by this Commission, eliminated the issue of proforma adjustments which the Utility contended would have entitled it to a rate increase. For this reason, the Utility believes the refund period should be shortened to twelve months.

It is our practice to require a refund in a water and sewer overearnings case from the date rates are placed subject to refund through the date the rates are reduced on a going forward basis. This case, as a result of the stipulation, did not require a rate reduction. Therefore, we required the refund through December 31, 1990, the end of the calendar year. We see no justification for the Utility's request for a shorter refund period. Therefore, the Utility's motion for reconsideration on this issue is denied.

Sunshine has also argued that we should reconsider our rejection of its Proposed Findings of Fact Nos. 6 and 7 and its Proposed Conclusions of Law Nos. 1 and 3. We will not reconsider our rejection of these proposed findings of fact because Order No. 22969 establishes a clear record basis for their rejection. Regarding Proposed Finding of Fact No. 6, the Utility's motion states that we should find that the record establishes that "...none of the water systems were written off or otherwise expensed on the owners (sic) tax returns..." The fact that the tax returns were not made a part of the record is not a sound basis, in the Utility's view, for this Commission to reject an unequivocal finding that none of the water systems were written off or expensed on Mr. Hodges' tax return. However, we would have no basis on which to make such a finding. The Utility had every opportunity to introduce the appropriate tax returns into evidence and chose not to do so. Without an opportunity to review the tax returns, we cannot make the finding the Utility urges in its Proposed Finding of Fact No. 6.

We will not reconsider our rejection of Proposed Finding of Fact No. 7 that all CIAC received by the Utility had been recorded. The only evidence regarding the recording of CIAC that was produced in this proceeding was the testimony by Utility Witness Nixon that the Commission audits reflected that all CIAC had been recorded properly. It is clear from the oral argument that the Utility's view is that it was this Commission's burden in this proceeding to prove that the $280,753 is CIAC rather than the Utility's burden to prove that it made any investment represented by that amount. The case law cited in Order No. 22969 clearly refutes such a burden for this Commission in any rate proceeding.

We will not reconsider our rejection of the Utility's Proposed Conclusions of Law Nos. 1 and 3 for the reasons, and based on the case law, cited at length in Order No. 22969. The Utility has the burden of proving that its rates are reasonable. It is not necessary that there be information in existence today that was not in existence when a prior order was issued for there to be an error in the earlier order. It may simply be the case that this Commission discovers it has treated information in an earlier instance in an erroneous fashion. That error must be corrected to ensure that the ratepayers are charged fair and reasonable rates. Such is the case here where Order No. 22969 was issued correcting an error this Commission made in its treatment of the $280,753 amount in Order No. 13014.

Upon verification of the refund by our Staff, there will be no further need for this docket to remain open. This docket shall, therefore, be closed once that verification is obtained.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Sunshine Utilities, Inc.'s Motion for Reconsideration of Order No. 22969 is hereby denied. It is further

ORDERED that this docket shall be closed upon our verification that Sunshine Utilities, Inc., has made the refund required by Order No. 22969.

By ORDER of the Florida Public Service Commission, this 15th day of AUGUST, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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.