

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate) DOCKET NO. 910637-WS
increase in Pasco County by) ORDER NO. PSC-92-0946-FOF-WS
Mad Hatter Utility, Inc.) ISSUED: 9/8/92
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
BETTY EASLEY

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Mad Hatter Utility, Inc., (MHU or utility) is a class "B" utility located in Lutz, Florida. On October 18, 1991, MHU completed the minimum filing requirements for a general rate increase and that date was established as the official date of filing for this proceeding. The approved test year for determining interim and final rates is the twelve-month period ended December 31, 1990.

By Proposed Agency Action (PAA) Order No. PSC-92-0123-FOF-WS, issued March 31, 1992, this Commission allowed MHU increased rates, required the refund of excess interim and emergency rates, reduced MHU's service availability charges, and found MHU in violation of several Commission rules. On April 21, 1992, Mr. Timothy G. Hayes filed a timely protest to the Commission's PAA Order.

By Order No. PSC-92-0610-FOF-WS, issued July 7, 1992, the Commission denied MHU's April 29, 1992, motion to dismiss the protest of Mr. Hayes, but granted MHU's May 19, 1992, motion to strike Mr. Hayes' untimely response to the motion to dismiss. On July 21, 1992, MHU filed a Motion for Reconsideration of Order No. PSC-92-0610-FOF-WS and a request for oral argument. Neither the Office of Public Counsel, which has intervened in the case, nor Mr. Hayes filed responses to MHU's request or motion.

In accordance with Rule 25-22.058, Florida Administrative Code, MHU's request for oral argument was made in a separate document accompanying its Motion for Reconsideration. However, MHU does not state how oral argument would aid us in understanding the issues raised in its motion.

We do not believe that MHU's Motion for Reconsideration requires oral argument. MHU's motion contains sufficient argument for us to render a fair and complete evaluation of the merits of the issues raised without oral argument. Therefore, MHU's request for oral argument is denied.

DOCUMENT NUMBER-DATE

10240 SEP -8 1992

PSC-RECORDS/REPORTING

In its Motion for Reconsideration, MHU argues two points. First, it argues that we erred by holding that Rule 25-22.036(9)(b)1., Florida Administrative Code, relieved Mr. Hayes of meeting the pleading requirements of Rule 25-22.036(7), Florida Administrative Code, in his protest. Second, MHU argues that while Mr. Hayes has standing to object to and to intervene in this proceeding, he failed to state a cause of action.

The purpose of a motion for reconsideration is to bring to the attention of the Commission some point which it overlooked or failed to consider when it rendered its decision in the first instance, such as a mistake of law or fact. Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962). We do not think that MHU's motion meets this standard.

With regard to MHU's first point, we think MHU misunderstands our holding. Nowhere in Order No. PSC-92-0610-FOF-WS is it stated that the pleading requirements of Rule 25-22.036(7) are obviated if a petitioner protesting a PAA Order adequately states an interest so as to avoid dismissal under Rule 25-22.036(9)(b)1. MHU's motion to dismiss was founded on the belief that Mr. Hayes' protest did not comply with Rule 25-22.036(7) because it did not raise any disputed issue of material fact. In Order No. PSC-92-0610-FOF-WS, we expressly stated, "[W]e disagree with the premise that Mr. Hayes' objection to the rates does not raise a disputed issue of fact."

We are not persuaded by MHU's second argument either. A valid petition on a PAA Order may not state a "cause of action" as that concept is generally understood because once a factual dispute is established by a protest, the relief requested is a Section 120.57(1) hearing.

Based on the foregoing, it is, therefore,

ORDERED that Mad Hatter Utility, Inc.'s Motion for Reconsideration of Order No. PSC-92-0610-FOF-WS is hereby denied.

By ORDER of the Florida Public Service Commission, this 8th day of September, 1992.



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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.