

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for) DOCKET NO. 910110-WS
Continuation of Gross-up of) ORDER NO. PSC-93-0677-PCO-WS
Contributions-in-Aid-of-) ISSUED: May 3, 1993
Construction (CIAC) in Lee)
County by GULF UTILITY COMPANY.)
_____)

ORDER DENYING SFCC'S MOTION FOR CONSOLIDATION
AND CONTINUANCE AND DENYING UTILITY'S MOTION TO STRIKE

On April 22, 1993, Southwest Florida Capital Corporation (SFCC) filed a Motion For Consolidation and Continuance, wherein SFCC requests consolidation of the above-referenced docket with Docket No. 930216-WS, Disposition of contributions-in-aid-of construction gross-up funds received by Gulf Utility Company, and a continuance of the combined cases.

In support of its motion, SFCC basically states that although the issues identified in this case involve the current and prospective ability of Gulf Utility Company (Gulf or utility) to collect gross-up and the disposition of amounts previously collected by Gulf will be the subject matter of Docket No. 930216-WS, a second hearing in Docket No. 930216-WS is highly likely. Hence, it is SFCC's belief that the issues identified in both dockets may be addressed in one hearing so as to limit unnecessary litigation expenses. SFCC cites Rule 25-22.035(2), Florida Administrative Code, and alleges that there are identity of parties and issues in dispute, consolidation promotes administrative efficiency and economy and consolidation does not injure any party other than SFCC. SFCC also filed a petition to intervene in Docket No. 930216-WS, which Gulf has indicated it does not oppose.

On April 23, 1993, Gulf filed a timely response to SFCC's Motion. In its Motion to Strike and Reply to Motion for Consolidation and Continuance Gulf asserts that the issues in the above-referenced docket relate to Gulf's prospective charges relative to contributions-in-aid-of-construction (CIAC), while the issues in Docket No. 930216-WS relate to past collections and whether refunds are necessary. The subject of Gulf's request to strike portions of SFCC's Motion involve SFCC's references to settlement attempts. On that point, Gulf states that it attempted in good faith to settle this controversy and SFCC's statements "have no place in the record in this proceeding and should be stricken."

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FPSC-RECORDS/REPORTING

As to the utility's Motion to Strike, it is my belief that SFCC's statements merely provide some background as to what occurred prior to this point. Such statements, in my view, do not harm either party. Therefore, the utility's Motion to Strike is denied.

The request to consolidate these two dockets and continue the hearing is also denied. Rule 25-22.035(2), Florida Administrative Code, states:

If there are separate matters before the presiding officer which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

First and foremost, the two dockets do not involve similar issues of law or fact. The primary issue in the docket currently set for hearing is whether Gulf is entitled to continue tax gross-up of CIAC. In determining whether the utility should be granted gross-up authority, our Commission Staff must look at whether or not the collection of CIAC causes the utility to incur an actual above-the-line tax liability and whether the utility has the ability to obtain alternative sources of financing. This involves a current and prospective analysis of the utility. On the other hand, the issue in Docket No. 930216-WS involves the disposition of excess funds, if any, previously authorized and collected. Specifically, the years pending review are 1987 through 1991. In this situation, Staff must review the CIAC amounts collected in past years, an analysis which is retrospective in nature.

Second, even assuming that parties will not be harmed by the consolidation of the dockets, such consolidation will not promote a just, speedy and inexpensive resolution of this matter. A consolidation would only result in additional testimony and additional witnesses for the refund issue. This seems very premature considering the refund docket is at this stage investigative in nature. At this point the Commission does not know if Gulf will have to refund any amount because the investigation has not yet been completed and the matter has not been addressed before the full Commission.

Once the full Commission votes on Staff's recommendation in Docket No. 930216-WS, a proposed agency action (PAA) order will be issued, whereby substantially affected persons will have 21 days to protest the order. Thus, SFCC will have a point of entry in the refund docket when the PAA order is issued. At this point, however, no one can be certain that a protest in Docket No. 930216-WS will indeed occur. In consideration of the foregoing, the motion for consolidation and continuance is denied. The hearing will be held in Docket No. 910110-WS as scheduled on May 5 and 6, 1993. The parties shall govern themselves accordingly.

Based on the foregoing, it is therefore,

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that Southwest Florida Capital Corporation's Motion for Consolidation and Continuance is denied. It is further

ORDERED that Gulf Utility Company's Motion to Strike is denied.

By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 3rd day of May, 1993.


THOMAS M. BEARD, Commissioner and
Prehearing Officer

(S E A L)

LAJ

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 25-22.038(2), 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.