

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a Rate ) DOCKET NO. 921261-WS  
Increase in Lee County by HARBOR ) ORDER NO. PSC-94-0839-FOF-WS  
UTILITIES COMPANY, INC. ) ISSUED: July 11, 1994  
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The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK  
JULIA L. JOHNSON

ORDER DENYING PROTEST OF ORDER NO. PSC-94-0391-CFO-WS

On November 18, 1993, Harbor Utilities Company, Inc. (Harbor) filed financial statements of Harbor's parent company, Imperial Harbor, along with a request for confidential classification of Imperial Harbor's financial statements. This request was denied in Order No. PSC-94-0391-CFO-WS, issued April 6, 1994. On April 18, 1994, Harbor filed a timely protest to Order No. 94-PSC-0391-CFO-WS, pursuant to Rule 25-22.006(3), Florida Administrative Code.

The Commission treats protests under this Rule as motions for reconsideration, pursuant to Rule 25-22.038(2), Florida Administrative Code. Harbor's basis for protest is that it thought through prior contact with the Commission, that a line by line justification was not needed and that all of its information fell into one of the statutory examples set forth in Section 367.156, Florida Statutes. The purpose of a motion for reconsideration is to point out some matter of law or fact which the Commission, in this case the Prehearing Officer, failed to consider or overlooked in its prior decision. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (1st DCA 1981). A motion for reconsideration is not an appropriate vehicle for mere reargument or to introduce new evidence or arguments which were not previously considered.

Harbor has not made such a showing, but simply reargues its original position again. The Prehearing Officer used her discretion in determining whether Harbor's request for confidentiality met the burden required in Rule 25-22.006(4), Florida Administrative Code. Harbor did not change its position on why the information should be confidential, but added reasons on how they would be affected if these items were not confidential. According to the standard set forth in Diamond Cab, the motion for reconsideration is not the vehicle to supplement the original pleading, but is only to be used to determine if the Prehearing

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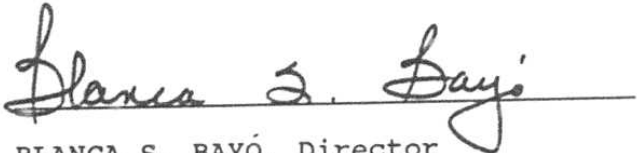
Officer failed to consider or overlooked some matter of law of fact.

Additionally, Harbor changed its original request by adding a line by line justification. In its explanation for not including a line by line justification in its original request Harbor states that a staff attorney told it a line by line justification was not necessary. Counsel for Harbor was, in fact, told by a staff attorney that if all the information for which confidentiality was being requested was exactly the same, for example, if all of the information consisted of prices for land, that it would probably be satisfactory to use one justification for all of those items instead of a line by line justification. However, a review of the material for which confidentiality was requested indicates that it falls into various categories. Some of the information is prices for land, some is narrative information, some is financial data, etc. A review of the line by line justification also indicates that there are various rationales offered for the varying categories of information. Therefore, even if counsel for Harbor was told a line by line justification was not needed, the request for confidentiality would have been denied for the other reasons mentioned in the above-referenced Order. Therefore, we deny Harbor's protest of Order No. PSC-94-0391-CFO-WS and affirm the prehearing officer's decision.

Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that Harbor Utilities Company, Inc.'s protest of Order No. 94-0391-CFO-WS is denied.

By ORDER of the Florida Public Service Commission, this 11th day of July, 1994.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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NOTICE OF 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 wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, 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.