

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for rate) DOCKET NO. 950495-WS
increase and increase in service) ORDER NO. PSC-96-0041-FOF-WS
availability charges by Southern) ISSUED: January 11, 1996
States Utilities, Inc. for)
Orange-Osceola Utilities, Inc.)
in Osceola County, and in)
Bradford, Brevard, Charlotte,)
Citrus, Clay, Collier, Duval,)
Highlands, Lake, Lee, Marion,)
Martin, Nassau, Orange, Osceola,)
Pasco, Putnam, Seminole, St.)
Johns, St. Lucie, Volusia, and)
Washington Counties.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING MOTIONS FOR RECONSIDERATION AND
REQUEST FOR ORAL ARGUMENT

BY THE COMMISSION:

BACKGROUND

Southern States Utilities, Inc. (SSU or utility) is a Class A utility, which provides water and wastewater service to service areas in 25 counties. On June 28, 1995, SSU filed an application with the Commission requesting increased water and wastewater rates for 141 service areas, pursuant to Section 367.081, Florida Statutes. SSU also requested an increase in service availability charges, pursuant to Section 367.101, Florida Statutes. The utility also requested that the Commission approve an allowance for funds used during construction (AFUDC) and an allowance for funds prudently invested.

By Order No. PSC-95-0901-PCO-WS, issued July 26, 1995, we acknowledged the intervention of the Office of the Public Counsel (OPC). The Sugarmill Woods Civic Association, Inc., (Sugarmill

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Woods) and the Spring Hill Civic Association, Inc., (Spring Hill) were granted intervenor status by Order No. PSC-95-1034-WS, issued August 21, 1995. We granted intervention to the Marco Island Civic Association, Inc., (Marco Island) by Order No. PSC-95-1143-WS, issued September 14, 1995. Sugarmill Woods, Spring Hill, and Marco Island are collectively referred to as "the Associations" in this Order.

SSU's initial filing included a request for interim rates pursuant to Section 367.082, Florida Statutes. The utility's interim request was based on a projected test year ending December 31, 1995. It requested interim rates which would produce additional revenues of \$7,428,460 for water operations and \$4,920,387 for wastewater operations. The utility agreed to extend the 60 day statutory time period by four days.

On August 30, 1995, OPC filed its Motion to Dismiss SSU's Request for an Interim Increase in Rates and accompanied that motion with a request for oral argument. On October 3, 1995, SSU filed a Suggestion of Error in Staff Recommendation and Request for Approval of Interim Revenue Requirements. The utility also requested oral argument on its suggestion of error. By Order No. PSC-95-1327-FOF-WS, issued November 1, 1995, we suspended the utility's proposed final rates, pursuant to Section 367.081(6), Florida Statutes. Further, we denied the utility's request for interim rates, but acknowledged that the utility may file another petition for interim relief due to the unique circumstances of this case. By that same order, we denied OPC's motion to dismiss the utility's request for interim rates and OPC's request for oral argument. We also denied consideration of SSU's suggestion of error and request for oral argument.

On November 2, 1995, OPC filed a Motion for Reconsideration of Order No. PSC-95-1327-FOF-WS, requesting reconsideration of our determination that a utility may use a "forecasted" income statement. OPC filed a motion for oral argument with its motion. On that same date the Associations filed a Motion for Reconsideration of Order No. PSC-95-1327-FOF-WS requesting that we reconsider and reverse our decision to permit SSU to file another petition for interim rates. The Associations did not file a request for oral argument. SSU filed a timely response to the motions on November 9, 1995.

ORAL ARGUMENT

OPC's November 2, 1995, motion for reconsideration was accompanied by a request for oral argument. Rule 25-22.058(1), Florida Administrative Code, requires a request for oral argument

to accompany the pleading and to state why oral argument would aid in our evaluation and understanding of the issues. OPC stated that oral argument would allow it explain how interim rates were developed in other industries, and explain the misinterpretation of the interim statute. In its November 9, 1995, response, SSU opposed OPC's request for oral argument.

Rule 25-22.0021(1), Florida Administrative Code, states in pertinent part that persons who may be affected by an item on an agenda may address this Commission, with the exception of actions on interim rates in file and suspend rate cases. When we considered SSU's interim rate request at our October 6, 1995, Special Agenda Conference, party participation was not permitted on the substantive decision. We also denied OPC's request for oral argument on its motion to dismiss SSU's interim request. We find that the same rationale expressed in Order No. PSC-95-1327-FOF-WS also applies in this instance. Because the decision which OPC seeks reconsideration concerns interim rates we find it appropriate to deny OPC's request for oral argument on its motion for reconsideration.

OPC'S MOTION FOR RECONSIDERATION

Rule 25-22.060(1), Florida Administrative Code, permits a party who is adversely affected by an order of the Commission to file a motion for reconsideration of that order. The standard for reconsideration is as set out in Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962). In that case, the Florida Supreme Court stated that the purpose of a petition for rehearing is merely to bring to the attention of the trial court or the administrative agency some point which it overlooked or failed to consider when it rendered its order in the first instance, and it is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment. Id. at 891. In Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974), the Court found that the granting of a petition for reconsideration should be based on specific factual matters set forth in the record and susceptible to review. We have applied these standards in our review of OPC's motion.

In its August 30, 1995, Motion to Dismiss SSU's Request for an Interim Increase in Rates, OPC requested that we deny SSU's interim rate request because the utility based its request on a budgeted interim test year. OPC contended that while Section 367.082, Florida Statutes, allows a projected test year rate base, it does not allow the use of projected revenues and expenses. By Order No. PSC-95-1327-FOF-WS we denied OPC's motion to dismiss. Section 367.082 establishes a prima facie entitlement for interim rates,

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and our procedures do not contemplate a party responding to an interim rate request. Therefore, while we denied SSU's interim rate request, we also denied OPC's motion to dismiss as being inappropriate.

On November 2, 1995, OPC timely filed its Motion for Reconsideration of Order No. PSC-95-1327-FOF-WS. OPC contended that while that order denied SSU's interim rate request, it "still established the principle that a...utility may file a request for interim rates using a forecasted income statement." OPC contended that our order does not recognize the difference between a "forecasted" rate base and a "forecasted" income statement. It argued that the order permits the use of a projected income statement in order to determine the difference between achieved and required rate of return. OPC stated that Order No. PSC-95-1327-FOF-WS "sets a precedent for all water and wastewater utilities that allows the use of a forecasted income statement for interim rate relief." Therefore, OPC requested that we "correct this error" before it is relied upon by other utilities.

In its timely response, SSU first argued that OPC did not have standing to participate in interim rate decisions. SSU also argued that OPC did not meet the test for reconsideration as set forth in Diamond Cab. Further, it contended that OPC has misinterpreted Section 367.082, and has not provided any citation to support its assertions. SSU pointed out that Order No. PSC-95-1327-FOF-WS agrees with the arguments OPC has made in its motion to dismiss.

In Order No. PSC-95-1327-FOF-WS we held that "Section 367.082 Florida Statutes, and our procedures do not contemplate parties filing a response or motion regarding a utility's request for interim rates." (page 7). That determination is also controlling in this instance. While we did not deny OPC's motion to dismiss on standing grounds, we found that a motion filed in response to a petition for interim rates to be inappropriate. For the same reasons as those enunciated in Order No. PSC-95-1327-FOF-WS, a motion for reconsideration of an interim decision filed by a party shall also be denied. Therefore, OPC's motion for reconsideration is denied as inappropriate.

Even if we were to consider OPC's motion for reconsideration OPC has not demonstrated that we made a mistake of law in our decision. OPC's motion was founded upon the mistaken premise that Order No. PSC-95-1327-FOF-WS held that interim rates could be achieved by using a projected rate base, and a projected test year. Order No. PSC-95-1327-FOF-WS did not make any findings as to the interpretation of Section 367.082(1) with regard to projected interim test years. We did not make a determination that a utility

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may file a request for interim rates based upon a projected income statement. The order expressed concern over the statutory language and directed the utility to consider those findings when refiling its petition.

THE ASSOCIATIONS' MOTION FOR RECONSIDERATION

In their November 2, 1995 Motion for Reconsideration the Associations sought reconsideration of our determination that the utility may file another petition for interim rates. The Associations contended that because SSU did not request alternate interim rate relief in addition to its request for interim uniform rates, it should not be permitted to file another interim petition.

In its timely response SSU argued that because Order No. PSC-95-1327-FOF-WS found that parties may not file responses to interim petitions, the Associations did not have standing to participate interim rate determinations, and therefore did not have standing to file a motion for reconsideration. SSU also contended that the Associations made no attempt to demonstrate a mistake of law or fact.

We have applied the standards of Rule 25-22.060(1), Florida Administrative Code, and Diamond Cab discussed herein to the Associations' motion. The Associations' motion for reconsideration is denied as inappropriate for the same reasons enunciated for OPC's motion. Even if we were to consider the substance of the motion, the Associations have not alleged a mistake of law or fact. The motion is merely reargument of a decision already made, and as such, would be denied on its merits.

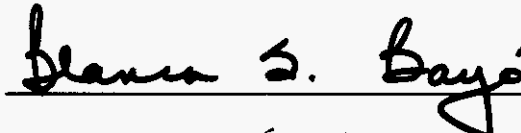
Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration of Order No. PSC-95-1327-FOF-WS and Request for Oral Argument filed by the Office of Public Counsel are denied. It is further

ORDERED that the Motion for Reconsideration of Order No. PSC-95-1327-FOF-WS filed by the Associations is denied.

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By ORDER of the Florida Public Service Commission, this 11th
day of January, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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Commissioner Deason and Commissioner Garcia dissented as to the denial of OPC's request for oral argument.

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 intermediate in nature, 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. Citizens of the State of Florida v. Mayo, 316 So.2d 262 (Fla. 1975), states that an order on interim rates is not final nor reviewable until a final order is issued. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.