

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for variance from  
Order No. PSC-96-1190-FOF-WS in  
Flagler County by Palm Coast  
Utility Corporation

DOCKET NO. 961276-WU  
ORDER NO. psc-97-0601-FOF-WU  
ISSUED: May 27, 1997

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING REQUEST FOR ORAL ARGUMENT,  
DENYING MOTION FOR RECONSIDERATION, OR  
ALTERNATIVELY, CLARIFICATION, AND ON COMMISSION'S OWN MOTION,  
DECIDING TO CORRECT ORDER  
REVOKING AUTHORITY TO COLLECT GROSS-UP OF CIAC

BY THE COMMISSION:

Background

Palm Coast Utility Corporation (PCUC or utility) is a utility operating in Flagler County. On August 5, 1996, the Flagler County Board of County Commissioners (Flagler County or the County) met and adopted Resolution No. 96-62 rescinding Commission jurisdiction in Flagler County effective immediately. By Order No. PSC-96-1391-FOF-WS, issued November 20, 1996, this Commission acknowledged Flagler County's rescision of Commission jurisdiction, effective August 5, 1996.

On August 1, 1996, the Small Business Job Protection Act of 1996 (the Act) passed Congress and was signed by the President on August 20, 1996. The Act provided for the non-taxability of contributions-in-aid-of-construction (CIAC) collected by water and wastewater utilities, effective retroactively for amounts received after June 12, 1996. As a result, on September 3, 1996, this Commission voted to revoke the authority of utilities to collect gross-up of CIAC, and to cancel the respective tariffs unless, within 30 days of the issuance of the order, affected utilities requested a variance. Order No. PSC-96-1180-FOF-WS, issued September 20, 1996 in Docket No. 960965-WS, memorialized the Commission's vote.

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FPSO-RECORDS/REPORTING

Pursuant to this order, on October 16, 1996, PCUC filed an Application for Variance to collect the gross-up taxes for prepaid CIAC that was collected from January 1, 1987 through June 12, 1996. By Order No. PSC-97-0188-FOF-WS, issued February 18, 1997, PCUC's Application for Variance was dismissed for lack of jurisdiction due to Flagler County's recision of Commission jurisdiction. On March 3, 1997, the utility filed a Motion for Reconsideration or, Alternatively, Clarification of that order and a Request for Oral Argument.

Request for Oral Argument

Rule 25-22.058, Florida Administrative Code, permits the Commission to grant oral argument, provided, among other things, that the request state "with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it." In its requests, PCUC states that the motion raises important legal arguments stemming from a series of Commission actions in at least four different dockets, and therefore, oral argument would assist the Commission in evaluating the inter-relationship of those dockets and the substantive issue regarding gross-up on prepaid CIAC, with counsel available to answer any questions the Commission may have.

PCUC's motion, however, contains sufficient argument to render a fair and complete evaluation of the merits without oral argument. Further, since interested persons may participate in the disposition of this item at the Commission Agenda Conference, counsel for the utility has the opportunity to address the Commission and answer any questions.

Therefore, PCUC's Request for Oral Argument on its Motion for Reconsideration or, Alternatively, Clarification is denied.

Motion for Reconsideration, or Alternatively, Clarification

In its motion, PCUC states that the Commission, after the effective date of jurisdictional transfer from the Commission to Flagler County, opened a new docket to cancel the gross-up authority of PCUC, among other utilities, and a new docket to consider disposition of gross-up of CIAC collected by PCUC from 1992 through 1994. Yet, the utility argues, the Commission dismissed its timely-filed application for variance from the cancellation of gross-up authority.

According to the utility, Section 367.171(5), Florida Statutes, states that all cases pending before the Commission or on appeal from an order of the Commission as of the jurisdictional

transfer date remain within the jurisdiction of the Commission until disposed of by the Commission. The utility states that if the Commission had the jurisdiction to dispose of gross-up collected by the utility during 1992 through 1994, and to cancel its authority to collect CIAC after the effective date of the jurisdictional transfer date, then the Commission continued to have jurisdiction to consider the utility's request for variance. Conversely, the utility argues that if the Commission did not have jurisdiction after the jurisdictional transfer date to consider its variance request, then it had no jurisdiction to cancel the utility's prospective gross-up authority. Further, the utility argues that it may not seek remedy from Flagler County, as stated by the Commission in Order No. PSC-97-0188-FOF-WS, because the Commission, and not the County, has canceled its gross-up authority.

PCUC, therefore, requests that we either exercise jurisdiction over the request for variance, or alternatively, clarify Order No. PSC-97-0188-FOF-WS to state that the Commission lacked jurisdiction to cancel the utility's gross-up authority.

Rule 25-22.060(1)(a), 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 purpose of a motion for reconsideration is to point out some matter of law or fact which the Commission failed to consider or overlooked in its prior decision. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingtree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). A motion for reconsideration is not an appropriate vehicle for mere reargument or to introduce evidence or arguments which were not previously considered. 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 upon specific factual matters set forth in the record and susceptible to review.

Initially, we note that the utility's request for reconsideration is merely a reargument of whether or not the Commission had the jurisdiction to entertain the utility's request for variance decided by Order No. PSC-97-0188-FOF-WS. That order stated that Flagler County rescinded Commission jurisdiction effective August 5, 1996, over one month before the Commission voted to allow utilities to request a variance of the order canceling the authority of utilities to collect gross-up. PCUC has provided no matter of law or fact which the Commission failed to consider or overlooked in its prior decision. Therefore, the utility's request for reconsideration is denied.

ORDER NO. PSC-97-0601-FOF-WU  
DOCKET NO. 961276-WU  
PAGE 4

However, we agree with PCUC that the Commission, in Order No. PSC-96-1180-FOF-WS, should not have canceled the utility's authority to continue grossing up CIAC. As stated previously, the Small Business Job Protection Act of 1996 was signed into law on August 20, 1996, and as a result, this Commission, on September 3, 1996, voted to revoke the authority of utilities to collect gross-up of CIAC. Order No. PSC-96-1180-FOF-WS, memorializing our vote, was issued on September 20, 1996. That order canceled the authority to gross-up of those utilities listed on Attachment "A" of the order. PCUC was one of the utilities listed on Attachment "A." But, at the time of our vote on September 3, 1996, Flagler County had already rescinded Commission jurisdiction as of August 5, 1996, and the Commission maintained authority over utilities in Flagler County only with respect to pending matters or matters on appeal from a decision of the Commission. See Section 367.171(5), Florida Statutes. Therefore, PCUC should not have been included on the list.

The utility's alternative request for clarification of Order No. PSC-97-0188-FOF-WS is really an untimely request for reconsideration of the earlier order, Order No. PSC-96-1180-FOF-WS, and therefore, it is denied. See Rule 25-22.060(3), which states that a motion for reconsideration shall be filed within 15 days of issuance of a final order. However, in light of our error, we, on our own motion, find it appropriate to correct Order No. PSC-96-1180-FOF-WS to remove PCUC from the list of utilities whose gross-up authority was revoked by that order, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Palm Coast Utility Corporation's Request for Oral Argument is hereby denied. It is further


ORDERED that Palm Coast Utility Corporation's Motion for Reconsideration or Alternatively, Clarification of Order No. 97-0188-FOF-WS is hereby denied. It is further

ORDERED that Order No. PSC-96-1180-FOF-WS revoking authority to collect gross-up of contributions-in-aid-of-construction shall be corrected as set forth within the body of this Order. It is further

ORDERED that this docket is hereby closed.

ORDER NO. PSC-97-0601-FOF-WU  
DOCKET NO. 961276-WU  
PAGE 5

By ORDER of the Florida Public Service Commission, this 27th  
day of May, 1997.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

DCW

NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.