

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and request
for hearing by Linda J. McKenna
and 54 petitioners regarding
unfair rates and charges of
Shangri-La by the Lake
Utilities, Inc. in Lake County.

DOCKET NO. 990080-WS
ORDER NO. PSC-00-1549-PCO-WS
ISSUED: August 25, 2000

ORDER DENYING ORAL ARGUMENT AND GRANTING IN PART AND
DENYING IN PART THE OFFICE OF PUBLIC COUNSEL'S MOTION IN LIMINE
TO LIMIT ISSUES CONSISTENT WITH PRIOR COMMISSION RULINGS

On January 19, 1999, Ms. Linda J. McKenna and 54 other customers filed the formal complaint against Shangri-La by the Lake Utilities, Inc. (Shangri-La or utility) which is the subject of this docket. By Order No. PSC-99-2254-PCO-WS, issued November 18, 1999, we acknowledged the Office of Public Counsel's (OPC) intervention.

By Proposed Agency Action (PAA) Order No. PSC-00-0259-PAA-WS, issued February 8, 2000, we adjusted rates, established a new class of service, authorized the collection of meter charges for irrigation, denied the request that the utility not be allowed to charge for service pending a resolution of the matter, and denied the request to revoke Shangri-La's certificates. On February 29, 2000, OPC timely filed a Petition on Proposed Agency Action and Objection to Proposed Agency Action.

By Order No. PSC-00-0629-PCO-WS, issued April 3, 2000, this matter was scheduled for an administrative hearing and controlling dates were established. The controlling dates were modified by Order No. PSC-00-1239-FOF-WS, issued July 10, 2000. On June 13, 2000, OPC filed a Motion in Limine to Limit Issues Consistent with Prior Commission Rulings (Motion in Limine) and a Request for Oral Argument. Shangri-La filed its timely Response on June 26, 2000.

On August 3, 2000, an issue identification meeting was held. At the issue identification meeting, Shangri-La orally raised several new issues which were not contained in OPC's protest or in PAA Order No. PSC-00-0259-PAA-WS. The issues raised at the informal issue identification meeting concern rate case expense, adjustments to the utility's plant-in-service, and operating and maintenance expenses.

DOCUMENT NUMBER-DATE

10549 AUG 25 8

FPSC-RECORDS/REPORTING

REQUEST FOR ORAL ARGUMENT

Rule 25-22.058(1), Florida Administrative Code, permits the Commission to grant oral argument, provided, among other things, that the request states "with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it."

In its request, OPC states that it was a party to a recent case in which the Commission relied upon Section 120.80(13)(b), Florida Statutes, in limiting the issues which could be entertained during hearing. Additionally, OPC states that "oral argument would provide a valuable forum to resolve any concerns surrounding the application of this relatively recent statutory provision." OPC's Motion in Limine appears to contain sufficient argument to render a fair and complete evaluation of the merits without oral argument. Therefore, OPC's request for oral argument is denied.

MOTION IN LIMINE

By its Motion in Limine, OPC seeks a ruling that the hearing in this case be limited to the issues raised in OPC's objection to Order No. PSC-00-0259-PAA-WS. In support of its argument, OPC cites to Section 120.80(13)(b), Florida Statutes, and In re: Application for Rate Increase in Pinellas County by Mid-County Services, Inc., Docket No. 971065-SU (Mid-County). Section 120.80(13)(b), Florida Statutes, provides that:

Notwithstanding ss. 120.569 and 120.57, a hearing on an objection to proposed agency action of the Florida Public Service Commission may only address the issues in dispute. Issues in the proposed agency action which are not in dispute are deemed stipulated.

OPC states that the Commission has interpreted Section 120.80(13)(b), Florida Statutes, to "prohibit the Commission from hearing any issue that was not raised by a party in an initial objection filed against the PAA," as evidenced by the Mid-County decision.

In addition, OPC argues that in Mid-County, the Commission refused to entertain any evidence proffered by OPC on any issues that were not raised in the objection to the PAA. Further, OPC states that "[t]he Commission held fast and strictly to an interpretation of §120.80(13)(b) that prohibited its consideration

of any issue that was not raised in the initial objection to the PAA." Accordingly, OPC asserts that by applying the Mid-County standard to this case, the issues should be limited to only those issues raised in its objection to Order No. PSC-00-0259-PAA-WS. Therefore, OPC asks the Commission to enter a ruling that "[t]he hearing in this docket will be limited to the issues raised in the Citizens objection to Order No. PSC-00-0259-PAA-WS."

On June 26, 2000, Shangri-La filed its timely response to OPC's Motion in Limine. Shangri-La's first argument is that OPC does not cite any written decisions of the Commission to support its interpretation of Section 120.80(13)(b), Florida Statutes, and that the Mid-County decision does not address the issue in a written ruling. Next, Shangri-La argues that OPC's "position would require every utility to challenge those issues in a PAA Order to which [it] disagrees, even though the end result was acceptable in order to preserve those issues should someone else protest them."

In addition, Shangri-La asserts that OPC's position is at least implicitly contradictory to the position it took in In re: Investigation into earnings of Tampa Electric Company, Order No. PSC-98-1619-PHO-EI, issued December 4, 1998, in Docket No. 950379-EI, wherein OPC took the position that an issue is deemed stipulated pursuant to Section 120.80(13)(b), Florida Statutes, if it was not protested nor placed in dispute in the parties prefiled testimony. Finally, Shangri-La cites to In re: Establishment of Intrastate Implementation Requirements, Order No. PSC-97-0860-PCO-TL, issued July 16, 1997, in Docket No. 970281-TL, which ruled that Section 120.80(13)(b), Florida Statutes, "does not limit the Commission's discretion to address all issues that it determines to be relevant to a full resolution of the case when an initial PAA Order is protested." Therefore, Shangri-La asserts that Section 120.80(13)(b), Florida Statutes, does not place a broad limitation upon the issues which may be addressed at hearing and that the Commission should continue its practice of identifying and formalizing issues through the party's prefiled testimony and prehearing statements.

Upon consideration, I believe that Section 120.80(13)(b), Florida Statutes, does indicate that the issues in dispute are those raised in the protest, but does not limit the Commission's discretion to address all the issues that it determines to be relevant to a full resolution of the case when a PAA order is protested. In re: Establishment of intrastate implementation requirements governing federally mandated deregulation of local

exchange company payphones, Order No. PSC-97-0860-PCO-TL, issued July 16, 1997, in Docket No. 970281. In In re: Establishment of intrastate implementation requirements governing federally mandated deregulation of local exchange company payphones, Order No. PSC-97-0860-PCO-TL, issued July 16, 1997, in Docket No. 970281, the Prehearing Officer found that:

. . . Section 120.80(13)(b), Florida Statutes, does not limit the Commission's discretion to address all issues that it determines to be relevant to a full resolution of a case when an initial PAA order is protested. Section 120.80(13)(b), Florida Statutes, is designed to limit the parties to the issues presented by the protest in order to prevent them from relitigating issues that the Commission already decided and that were not protested. It is not designed to prevent the Commission from addressing matters it deems necessary to a full resolution of the case in the manner it deems appropriate.

Section 120.80(13)(b), Florida Statutes, provides that those issues which are not in dispute are deemed stipulated. The Commission has interpreted "issues in dispute" to be those raised pursuant to a timely protest of a PAA Order. Id.

As stated in the case background, on August 3, 2000, an issue identification meeting was held in which Shangri-La raised new issues which were not contained in OPC's protest, nor were they addressed in PAA Order No. PSC-00-0259-PAA-WS. Shangri-La is prohibited from raising these new issues. Additionally, the issues raised by Shangri-La at the issue identification meeting are not necessary for full resolution of the case.

For the foregoing reasons and consistent with the Commission's interpretation of Section 120.80(13)(b), Florida Statutes, OPC's Motion is granted in part and denied in part. The issues in dispute for the purposes of Section 120.81(13)(b), Florida Statutes, are those raised in OPC's protest. However, to the extent that OPC seeks to limit the Commission's discretion to address all issues that it determines to be relevant to the full resolution of the case, the Motion in Limine is denied.

Based on the foregoing, it is

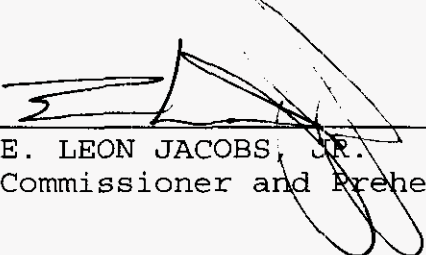
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ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, the Office of Public Counsel's Request for Oral Argument is hereby denied. It is further

ORDERED that the Office of the Public Counsel's Motion in Limine to Limit Issues Consistent with Prior Commission Rulings is granted in part and denied in part, as set forth in the body of this Order. It is further

ORDERED that Shangri-La by the Lake Utilities, Inc. is prohibited from raising new issues, as set forth in the body of this Order.

By ORDER of Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, this 25th day of August, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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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 25-22.0376, 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.