

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for interim and) DOCKET NO. 940109-WU
permanent rate increase in) ORDER NO. PSC-95-1316-FOF-WU
Franklin County by ST. GEORGE) ISSUED: October 27, 1995
ISLAND UTILITY COMPANY, LTD.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
DIANE K. KIESLING

ORDER DENYING ST. GEORGE ISLAND UTILITY COMPANY,
LTD.'S MOTION FOR CLARIFICATION

AND

NOTICE OF PROPOSED AGENCY ACTION ORDER
GRANTING ST. GEORGE ISLAND UTILITY COMPANY,
LTD.'S ALTERNATIVE MOTION FOR RELIEF

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein regarding granting St. George Island Utility Company, Ltd.'s alternative motion for relief is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

St. George Island Utility Company, Ltd. (St. George or utility) is a Class B water utility providing service to approximately 993 water customers in Franklin County. For the test year ended December 31, 1992, the utility reported in its application operating revenues of \$314,517 and a net operating loss of \$428,201.

On January 31, 1994, the utility filed an application for approval of interim and permanent rate increases pursuant to Sections 367.081 and 367.082, Florida Statutes. The utility satisfied the minimum filing requirements (MFRs) for a rate increase, and this date was designated as the official filing date. By Order No. PSC-94-1383-FOF-WU, issued November 14, 1994, we

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approved a rate increase for St. George and revised the utility's service availability charges. This Order also required St. George to escrow its service availability charges in order to assure availability of funds for future capital improvements.

On July 19, 1995, St. George filed with this Commission a motion for clarification of final order or in the alternative, for relief from final order. In its motion, St. George requests the Commission to enter an order clarifying that only plant capacity charges must be escrowed by the utility or, in the alternative, to enter an order modifying its prior order to specify that only plant capacity charges must be escrowed.

On July 26, 1995, the Office of Public Counsel (OPC) filed a response to St. George's motion. OPC's argument against Commission consideration of St. George's motion is twofold. First, OPC argues that the Commission does not have jurisdiction to entertain the motion since the case had been appealed to the First District Court of Appeal. This argument is now moot, since St. George withdrew the appeal on August 28, 1995. Secondly, OPC argues that the Commission should not consider St. George's motion, since the subject of the instant motion was not part of St. George's motion for reconsideration of Order No. PSC-1383-FOF-WU, filed on November 29, 1995.

MOTION FOR CLARIFICATION

By Order No. PSC-94-1383-FOF-WU, issued November 14, 1994, we approved a rate increase for St. George and revised the utility's service availability charges. In part, this order required St. George to escrow all of its service availability charges, so that those monies would be available for future capital improvements. St. George has three types of service availability charges: plant capacity charges, main extension charges, and meter installation fees. As stated earlier, on July 19, 1995, St. George filed with this Commission a motion for clarification of that order, or in the alternative, a motion for relief from the order.

St. George agrees that the plain language of Order No. PSC-94-1383-FOF-WU states that the utility shall escrow all of its service availability charges. On page 77, Order No. PSC-94-1383-FOF-WU reads as follows:

[It is further] ORDERED that St. George Island Utility Company, Ltd., shall establish, and place all service availability charges hereafter collected into, a commercial escrow account.

Nonetheless, the utility questions whether the language of Order No. PSC-94-1383-FOF-WU accurately reflects the intent of the Commission. Based on the discussion on pages 65 and 66 of Order No. PSC-94-1383-FOF-WU and on an excerpt of the transcript of the October 7, 1994 Special Agenda Conference, St. George asserts that the utility understands the Order to mean that only plant capacity charges shall be escrowed. Pages 65 and 66 of Order No. PSC-94-1383-FOF-WU first discuss the reduction of St. George's plant capacity charge, and then the requirement to escrow all service availability charges. In addition, the transcript from the October 7, 1994 Special Agenda Conference could lead the utility to believe that the Commission was only addressing plant capacity charges. However, the ordering paragraph contained in Order No. PSC-94-1383-FOF-WU and the vote sheet from the Special Agenda Conference make it clear that St. George is required to escrow all of its service availability charges.

In its response, OPC argues that the Commission should summarily deny St. George's motion, since St. George did not bring forth the instant alleged confusion in its motion for reconsideration of Order No. PSC-94-1383-FOF-WU. OPC argues that by failing to bring forth the escrowing of service availability charges in its motion for reconsideration, it has waived its right to seek reconsideration by the instant motion. We find that St. George has requested clarification, not reconsideration, of the final order. The utility's motion requests clarification on whether all service availability charges are to be escrowed according to Order No. PSC-94-1383-FOF-WU, or only plant capacity charges.

St. George is requesting that the Commission clarify the Order by stating that only plant capacity charges are to be escrowed. This is substantively different from what Order No. PSC-94-1383-FOF-WU states. The Order speaks for itself and requires St. George to escrow all service availability charges. Accordingly, the portion of St. George's motion requesting the Commission to enter an order clarifying Order No. PSC-94-1383-FOF-WU by stating that only plant capacity charges must be escrowed is hereby denied.

ALTERNATIVE MOTION FOR RELIEF

In its alternative motion, St. George requests that the Commission grant the utility relief from Order No. PSC-94-1383-FOF-WU by entering an order requiring the utility to only escrow its plant capacity charges. OPC contends that this situation constitutes nothing short of reconsideration of the Order.

In its alternative motion, St. George is requesting relief from the Order because Order No. PSC-94-1383-FOF-WU makes no provision for releasing funds from escrow to pay for past or currently incurred costs. We find that we have the authority to provide relief from our orders. "[T]he power of the Commission to modify its orders is inherent by reason of the nature of the agency and the functions it is empowered to perform." Reedy Creek Utilities v. Florida Public Service Commission, 418 So.2d 249 (Fla. 1982).

We have recognized that St. George has continually operated at a loss, that St. George has had difficulty obtaining capital funds from outside sources, and that we needed assurance that funds would be available when future capital improvements were deemed necessary. These reasons led to our requirement in Order No. PSC-94-1383-FOF-WU that the utility escrow all of its service availability charges.

As stated above, St. George has three types of service availability charges: plant capacity charges, main extension charges, and meter installation fees. Order No. PSC-94-1383-FOF-WU requires St. George to escrow all three of these service availability charges in order to ensure that funds will be available for future capital improvements. However, we find that the requirement to escrow the main extension charges and meter installation fees does nothing to ensure that funds will be available for future capital improvements; in fact, requiring the utility to escrow these charges harms the utility by keeping these funds from being readily available to offset past debt and pay for meters installed as new customers connect. We note that St. George has been escrowing its plant capacity charges since Order No. PSC-94-1383-FOF-WU was issued November 14, 1994, but not all of the service availability charges as required by the Order.

We continue to believe that escrowing the plant capacity charges is necessary. Plant capacity charges shall be escrowed because these charges are collected from new customers for the purpose of funding future additions to capacity. This is the only service availability charge of the utility's three types that relates directly to future capital improvements. Accordingly, we believe that by requiring St. George to only escrow its plant capacity charges, our goal of ensuring that funds will be available for future capital improvements will still be fulfilled.

Accordingly, the utility's request for relief from having to escrow main extension charges and meter installation fees is hereby granted. The utility shall continue to escrow its plant capacity charges.

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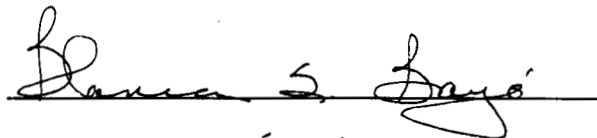
Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that St. George Island Utility Company, Ltd.'s motion for clarification of Order No. PSC-94-1383-FOF-WU is hereby denied. It is further

ORDERED that St. George Island Utility Company, Ltd.'s alternative motion for relief from Order No. PSC-94-1383-FOF-WU is granted as set forth in the body of this Order. It is further

ORDERED that this docket shall remain open for St. George Island Utility Company, Ltd. to comply with the provisions of Order No. PSC-94-1383-FOF-WU.

By ORDER of the Florida Public Service Commission, this 27th day of October, 1995.

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SKE

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.

As identified in the body of this order, our action regarding granting St. George Island Utility Company, Ltd.'s alternative motion for relief is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 17, 1995. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 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 of the effective date 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.

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Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) 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 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.

MEMORANDUM

RECEIVED
OCT 26 1995

October 25, 1995

12:15/3:15 cc
FPSC-RECORDS/REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (EDMONDS) *See LAT*
RE: DOCKET NO. 940109-WU - Petition for interim and permanent rate increase in Franklin County by ST. GEORGE ISLAND UTILITY COMPANY, LTD.

1316-FOF

Attached is an ORDER DENYING ST. GEORGE ISLAND UTILITY INC.'S MOTION FOR CLARIFICATION AND NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING ST. GEORGE ISLAND UTILITY, LTD.'S ALTERNATIVE MOTION FOR RELIEF, to be issued in the above-referenced docket. (Number of pages in Order - 7)

SKE/dp

Attachment

cc: Division of Water and Wastewater (Amaya, Galloway, Kaproth, Merchant, Moniz, Willis)

I: 940109-O.SKE

[Handwritten signature]

3fax / 3 mail