BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a rate increase in Brevard County by Florida Cities Water Company (Barefoot Bay Division).	)	DOCKET NO. 951258-WS ORDER NO. PSC-96-0499-FOF-WS ISSUED: April 9, 1996

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 MOTION FOR RECONSIDERATION AND REQUEST FOR ORAL ARGUMENT

BY THE COMMISSION:

BACKGROUND

Florida Cities Water Company, Barefoot Bay Division, (FCWC or utility) is a Class A utility providing water and wastewater service for a predominately residential area in Barefoot Bay, Florida. The utility's Barefoot Bay division was serving 4,458 water and 4,440 wastewater customers at year end December 31, 1994. For the twelve months ended December 31, 1994, the utility recorded operating revenues of $671,582 for water service and $823,463 for wastewater service. The utility recorded a net operating loss of $73,769 for the water system and a net operating income of $77,577 for the wastewater system. The Barefoot Bay system is in an area that has been designated by the St. Johns River Water Management District as a critical water supply use caution area.

On November 6, 1995, the utility filed this 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, pursuant to Section 367.083, Florida Statutes. The utility has requested that this case be scheduled for a formal hearing and not processed pursuant to the proposed agency action process as provided for in Section 367.081(8), Florida Statutes. This case has been set for hearing in Brevard County on April 1 and 2, 1996. The utility also applied to the Commission on November 3, 1995, for

approval of interim and permanent increase in its wastewater plant capacity charge in Docket No. 951311-SU, which is separate from this docket.

The utility's last rate case for only the Barefoot Bay water system was in Docket No. 940687-WU, finalized on October 11, 1994, in Order No. PSC-94-1237-FOF-WU. The utility's last rate case for both Barefoot Bay systems in Docket No. 910976-WS, was finalized on June 24, 1992, in Order No. PSC-92-0563-FOF-WS. The utility has received a price index rate increase every year since 1993.

The utility's interim and final application for increased rates is based on test year ended June 30, 1996. FCWC has requested interim and final revenues of $916,723 for water and $2,110,481 for wastewater based on a projected test year ending June 30, 1996. This represents an increase of $153,136 for water and $1,273,024 for wastewater, or 20.05% and 152.01%, respectively.

By Order No. PSC-96-0119-WS, issued January 23, 1996, we granted FCWC interim water and wastewater rates subject to refund. Within the Order, we also denied consideration of FCWC's suggestion of error. On January 29, 1996, FCWC timely filed a motion for reconsideration along with a request for oral argument on the motion.

REQUEST FOR ORAL ARGUMENT

The utility filed a request for oral argument with its motion for reconsideration. Before considering the substance of FCWC's motion, we first consider whether oral argument is appropriate on an item regarding an interim rate decision. Our procedural rules preclude parties from participating in discussions regarding interim rates. 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 the Commission, with the exception of actions on interim rates in file and suspend rate cases. In Order Nos. PSC-95-1327-FOF-WS and PSC-96-0041-FOF-WS, issued on December 7, 1995 and January 11, 1996, in Docket No. 950495-WS, we denied oral argument on motions for reconsideration which address interim decisions.

The same rationale expressed in these Orders also applies in this instance. Because the underlying decision concerned interim rates in which participation is limited to the Commission and Staff, FCWC's request for oral argument on its motion for reconsideration of the interim decision is denied.

FCWC's MOTION FOR RECONSIDERATION

As stated earlier, on January 29, 1996, FCWC filed a motion for reconsideration of Order No. PSC-96-0119-FOF-WS which, in part, granted the utility an interim water and wastewater increase subject to refund. In its motion, FCWC moves the Commission to: (1) take jurisdiction and grant the motion for reconsideration; (2) acknowledge that FCWC has been required to make additional investment by the Florida Department of Environmental Protection(FDEP); (3) allow FCWC to earn a fair rate of return on the FDEP required investment; and (4) allow an increase in revenues of $1,273,024 by using the projected test year rate base of June 30, 1996, or in the alternative, determine the revenue requirements based on a test year rate base ended October 31, 1995 and grant rates which will produce additional revenue of $639,080.

In support of the aforementioned requests, FCWC argues the following:

(1) The Commission failed to apply Section 367.082(1), Florida Statutes, when we approved FCWC's interim rates;

(2) Between year end June 30, 1995 and projected test year end June 30, 1996, the Florida Department of Environmental Protection(FDEP) will have required FCWC to invest an additional $5,976,308 in plant in service, of which the utility has expended $4,154,408. The Commission failed to consider this when we approved FCWC's interim rates; and

(3) The Commission should use an historic test year ended October 31, 1995 to account for the $4,154,408 of FDEP required investment already expended. To do otherwise will deny FCWC rates within its last authorized rate of return.

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 our prior decision. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingtree v. Quaintance, 394 So. 2d 161 (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.

Failure to Apply Section 367.082(1), Florida Statutes

FCWC argues that we made a mistake of law because we allegedly failed to apply Section 367.082(1), Florida Statutes, when we approved interim rates for the utility. Essentially, what FCWC alleges is that because that statute provides us the option of

applying projected test year rate base, we should have done so. Therefore, by not using projected test year rate base, FCWC argues that we failed to apply the statute. FCWC provides a litany of Florida cases which stand for the proposition that, when interpreting a statute, the Commission must apply the plain and ordinary meaning. For example, Holly v. Auld et al., 450 So.2d 217 (Fla. 1984), and Citizens of the State of Florida v. Public Service Commission, 435 So.2d 784 (Fla. 1983). Although we agree with these cases, they do not strengthen FCWC's argument, because we did, in fact, employ the plain and obvious meaning of the statute.

The portion of Section 367.082(1), Florida Statutes, which FCWC relies upon, is permissive. It states that the Commission **may** use a projected test year rate base for interim purposes (Emphasis added). We considered using a projected test year rate base in calculating FCWC's interim rates, but refrained from doing so due to our concern with the mismatch between rate base and the other elements of rate determination. In the Order, we specifically state:

> Using a projected rate base with historical revenues, expenses, customers and capital structure would present a mismatch. Some of the rate base components could be revenue producing, or growth-related plant costs. Generally, revenue producing plant with associated customer growth mitigates the need for a rate increase. Another factor to consider is that when rate base increases, capital costs would accordingly increase. This could present either an increase or a decrease in the weighted cost of capital, depending on the new capital obtained. Simply put, to allow only one component to increase does not accurately match the traditional concept of the test year ratemaking philosophy required by the statute.

Contrary to FCWC's claim, we did apply Section 367.082(1), Florida Statutes. We find, therefore, that we did not err as a matter of law, nor overlook any point of fact or law in this regard.

FCWC also states that the utility's test year approval letter from us, dated October 26, 1995, which approved a projected and historic test year, failed to instruct the utility that the projected test year provision of Section 367.082(1), Florida Statutes, would not be followed. Furthermore, FCWC states that our letter dated November 16, 1995, which deemed the utility's application for interim and permanent rates complete, failed to state that we did not intend to apply that portion of Section 367.082(1), Florida Statutes. The test year approval letter grants

the test year for filing purposes only. It does not presume or reflect the ultimate determination of whether the approved test year or any other issues are appropriate until the conclusion of the docket. The Commission letter which deems an application complete merely states that the applicant has met all of the minimum filing requirements (MFRs). Simply because the utility provides these MFRs does not mean that the data contained therein is justified or correct, nor can such be determined from the MFRs alone. "Burden of proof in a commission proceeding is always on a utility seeking a rate change...." Florida Power Corp. v. Cresse, 413 So.2d 1187, 1191 (Fla. 1982), citing Welch, Cases and Text on Public Utility Regulation, 638 (Revised Edition 1968).

Finally, FCWC states that it was not informed of our objection to the use of projected test year rate base for interim rates, until staff filed its recommendation. We make our determination at the Agenda Conference. Each case is processed and decided on the facts set forth in that case. Here, FCWC is merely disagreeing or arguing with our decision, and FCWC has not demonstrated that a mistake of fact or law has been made.

FDEP Required Investment in Plant-in-Service

FCWC states that the compelling reason for using a projected test year is that between June 30, 1995 and projected test year end June 30, 1996, it will have invested an additional $5,976,308 in plant-in-service. FCWC states that this FDEP required investment was recognized by us in Order No. PSC-96-0043-FOF-SU, issued January 11, 1996, in a separate docket, which approved an interim increase in plant capacity charges for the Barefoot Bay system. FCWC appears to be arguing that we made a mistake of law by not considering that same investment when we set interim rates in the current docket. According to the utility, it made $4,154,408 of the FDEP required investment as of October 31, 1995, which was provided in its MFRs in this docket. By omitting that investment in its interim determination, we allegedly made a mistake of fact.

We do not believe that we were required to consider the foregoing when we approved FCWC's interim rates and therefore, did not make a mistake of fact or law. Order No. PSC-96-0043-FOF-SU, was issued by us in Docket No. 951131-SU, in which FCWC applied for increased plant capacity charges. In that docket, FCWC stated that its application was based on an **estimated** cost of $5,968,843, to comply with FDEP required upgrades. (Emphasis added) Unlike an application for increased rates, we often rely on projected plant when increasing plant capacity charges.

We acknowledge that FCWC provided information in its rate case MFRs to support its investment of $4,154,408. However, we did not ignore this information when we granted FCWC interim rates. FCWC filed no other information on rate base for the period ending October 31, 1995. In order for us to have calculated interim rates as of October 31, 1995, it would have been necessary for FCWC to provide all other components of rate base for that period, which FCWC did not do. Section 367.082(1), Florida Statutes, provides that a utility must make a prima facie showing of entitlement for interim relief, by demonstrating that the utility is earning below the range of reasonableness on its last authorized rate of return. We can only review what the utility filed. Accordingly, we did not err by omitting this investment when calculating FCWC's interim rates.

The Commission Should Use Historic Test Year Ending October 31, 1995

Finally, FCWC argues that the if we were not comfortable applying projected rate base for interim rates, we should use an historic rate base ending October 31, 1995, to account for the utility's investment in plant of $4,154,408, discussed earlier. FCWC states that an interim grant of rates which excludes this investment prevents the utility from collecting the minimum of its last authorized rate of return. Here FCWC is raising a new argument. In its motion, the utility includes a Schedule of Interim Wastewater Rate Base, in which it sets forth the various components of rate base for the period ending October 31, 1995.

As stated earlier, we did not include the FDEP required investment in interim rates, because the utility failed to include the other components of rate base in its MFRs. The Schedule of Interim Wastewater Rate Base is made up of new information not included in the MFRs. It is therefore, inappropriate to consider this information as a basis for reconsideration.

In any event, the utility is requesting that we base interim revenues on a different test year than for which it originally applied. This request is not appropriate in a motion for reconsideration. If FCWC wishes to collect interim rates based on an historic test year date October 31, 1995, it is not precluded from refiling its rate case application. In that instance the eight-month deadline for final action by the Commission would be reset from the date the new filing meets the minimum filing requirements.

On each point raised, we find that FCWC has not adequately met the standards set forth in Diamond Cab or Pingree. Accordingly, FCWC's motion for reconsideration is hereby denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that FCWC's Request for Oral Argument on its Motion for Reconsideration is hereby denied. It is further

ORDERED that FCWC's Motion for Reconsideration of Order No. PSC-96-0119-WS, is hereby denied. It is further

ORDERED that this docket shall remain open pending final disposition of this case.

By ORDER of the Florida Public Service Commission, this 9th day of April, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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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.