

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 941121-WS
amendment of Certificates Nos.) ORDER NO. PSC-96-0863-FOF-WS
359-W and 290-S to add territory) ISSUED: July 2, 1996
in Broward County by SOUTH)
BROWARD UTILITY, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON

ORDER DENYING REQUEST FOR ORAL ARGUMENT

BY THE COMMISSION:

BACKGROUND

South Broward Utility, Inc. (SBU or Utility) provides water and wastewater service in Broward County and services approximately 1,853 water and wastewater customers. The annual report for 1993 shows that the consolidated annual operating revenue for the system is \$1,319,408 and the net operating income is \$30,802. The utility is a Class B utility under our jurisdiction.

On October 18, 1994, pursuant to Section 367.045, Florida Statutes, SBU applied for an amendment of its water and wastewater Certificates Nos. 359-W and 290-S to add additional territory in Broward County, in Docket No. 941121-WS. The proposed additional territory would consist of the "Carr Property" (97.95 acres) and "Imagination Farms" (900 acres). SBU states that the property owners plan to create single-family developments, totalling 1,200 units within the two properties.

On September 1, 1994, the City of Sunrise (Sunrise or City) filed a declaratory action in the Circuit Court in and for Broward County (Broward circuit court), in Case No. 94-010527. Sunrise petitioned the court to secure an order declaring that Sunrise had the exclusive right to serve the territory SBU wished to add to its service area. On September 26, 1994, SBU filed a motion to dismiss Sunrise's complaint, which was granted by the Broward circuit court on December 29, 1994, for lack of subject matter jurisdiction.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On November 17, 1994, Sunrise filed with this Commission Sunrise's Objection to and Motion to Dismiss, or in the alternative, Motion to Stay Consideration of, South Broward Utility, Inc.'s Application for Amendment of Water Certificate No. 359-W and Wastewater Certificate No. 290-S in Broward County, Florida ("Sunrise' Objection"). By Order No. PSC-95-0614-FOF-WS, issued May 22, 1995, we denied Sunrise's motions. Thereafter a formal hearing was scheduled.

On January 6, 1995, Sunrise filed with the circuit court an amended complaint. SBU filed a motion to dismiss Sunrise's amended complaint. On April 14, 1995, we filed, with the circuit court, a Petition for Leave to Intervene, or in the Alternative, to Appear as Amicus Curiae and Memorandum in Support of South Broward Utility, Inc.'s Motion to Dismiss. On April 18, 1995, the Broward circuit court held a hearing on SBU's motion to dismiss. The court dismissed Sunrise's amended complaint without ruling on the Commission's petition to intervene and directed the City to litigate its claim before this Commission.

On May 3, 1995, Sunrise filed a Petition for Writ of Mandamus and Certiorari in the District Court of Appeal of the State of Florida Fourth District (District Court of Appeal). On August 15, 1995, the court entered an order treating Sunrise's petition as an appeal from a final order. On October 3, 1995, Sunrise filed its Initial Brief with the court. On October 30, 1995, we filed a Motion for Leave to File Amicus Curiae Brief and the accompanying brief with the court.

On January 22, 1996, SBU filed its Motion for Preservation of Jurisdiction, or in the Alternative, Motion to Expedite hearing and its Request for Oral Argument on this Motion. SBU also filed a Motion for Emergency Hearing on the aforementioned motion. On February 1, 1996, Sunrise timely filed its Response to South Broward Utility's Motion for Preservation of Jurisdiction. SBU renewed its Motion for Emergency Hearing on February 2, 1996. Sunrise filed a response on February 13, 1996. By Order No. PSC-96-0252-PCO-WS, issued February 22, 1996, we denied SBU's Motion for Emergency Hearing. By Order No. PSC-96-0420-FOF-WS, issued March 23, 1996, we denied SBU's Motion for Preservation of Jurisdiction, or in the Alternative, Motion to Expedite Hearing.

The Prehearing Conference was held on March 18, 1996, in Tallahassee, Florida. At the conference, the parties and staff identified nine issues to be addressed at the formal hearing. Prehearing Order No. PSC-96-0415-PHO-WS, was issued March 26, 1996. On April 8 through 9, 1996, we held the technical hearing in Fort Lauderdale, Florida.

On April 24, 1996, the District Court of Appeal affirmed the Broward Circuit Court's decision to dismiss Sunrise's declaratory action. Sunrise filed a Motion for Rehearing and Clarification of the District Court of Appeal's decision on May 1, 1996. On June 17, 1996, the District Court of Appeal denied Sunrise's motion.

Pursuant to Rule 25-22.056(3)(a), Florida Administrative Code, each party shall file a post-hearing statement which shall include a summary of each position. On May 7, 1996, SBU filed its Statement of Issues and Positions and a Request for Oral Argument of on its statement along with that of Sunrise. On the same date, Sunrise filed its Proposed Finding of Fact and Conclusions of Law, its Legal Brief on the Issues and its Post-Hearing Statement of Positions.

REQUEST FOR ORAL ARGUMENT

As previously stated, on May 7, 1996, the utility filed a Request for Oral Argument on its Statement of Issues and Positions and Sunrise's posthearing statement. SBU states that it did not receive a copy of Sunrise's posthearing statement of issues and positions prior to SBU filing its Statement of Issues and Positions. According to SBU, there may be statements and matters in Sunrise's statement to which the utility must respond in order for this Commission to comprehend and evaluate the issues before it. SBU also states that the issues in this case are very complex and unusual, and oral argument would aid us in comprehending and evaluating the issues by giving us an opportunity to ask the utility questions on matters requiring clarification.

We find that our rules do not permit SBU an opportunity for oral argument on Sunrise's posthearing statement. Additionally, our rules do not require a party to provide other parties with its posthearing statement prior to filing same with the Commission. Therefore, we find that it is immaterial that SBU did not have a copy of Sunrise's brief to assist the utility in the preparation of its own brief. Furthermore, Rule 25-22.058(1), Florida Administrative Code, provides that a request for oral argument shall be contained on a separate document and shall accompany the pleading on which oral argument is requested. We find that this language contemplates a party requesting oral argument on its own pleading, not that of another party. Therefore, we find it appropriate to deny SBU's Request for Oral Argument on Sunrise's posthearing statement.

Rule 25-22.058(1), Florida Administrative Code, also provides that the request for oral argument shall state with particularity why oral argument would aid this Commission in comprehending and

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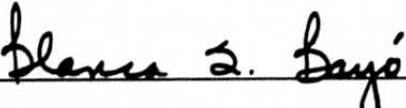
evaluating the issues before it. As stated earlier, we held the technical hearing on April 8-9, 1996. During the two-day technical hearing, each party had the opportunity to present testimony and sponsor exhibits on behalf of its case. Our staff had an opportunity to cross-examine witnesses for both parties. Additionally, we asked the parties numerous questions pertaining to the issues in this case. In its posthearing statement, SBU is limited to making comments based upon testimony and evidence entered into the record at hearing. We are fully apprised of the evidence and are capable of evaluating the issues before us without oral argument. In light of the foregoing, we find it appropriate to deny SBU's Request for Oral Argument on its Statement of Issues and Positions. This docket shall remain open pending the final disposition of this matter.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that South Broward Utility Inc.'s Request for Oral Argument on its Statement of Issues and Positions and on the City of Sunrise's posthearing statement, is hereby denied. It is further

ORDERED that this docket remain open.

By ORDER of the Florida Public Service Commission, this 2nd day of July, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 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.