

RECEIVED ✓

MAY 20 1997

11:30

FPSC - Records/Reporting

MEMORANDUM

May 20, 1997

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PARKER) *MP*

RE: DOCKET NO. 960329-WS - Application for increase in rates and service availability charges in Lee County by Gulf Utility Company

DOCKET NO. 960234-WS - Investigation of rates of Gulf Utility Company in Lee County for possible overearnings

PSC-97-0577-5
PCO-WS

Attached is an Order Denying Motion to Supplement the Record, to be issued in the above-referenced docket. (Number of pages in Order - 3)

JSB/dp

Attachment

cc: Division of Water and Wastewater (Willis, Crouch, Fuchs, Galloway, Merchant, Rendell, Webb)

I: 960329OR.JSB

faxed - 2/10 P.C.
marked -

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for increase) DOCKET NO. 960329-WS
in rates and service)
availability charges in Lee)
County by Gulf Utility Company.)

In Re: Investigation of rates) DOCKET NO. 960234-WS
of Gulf Utility Company in Lee) ORDER NO. PSC-97-0577-PCO-WS
County for possible) ISSUED: May 20, 1997
overearnings.)

ORDER DENYING MOTION TO SUPPLEMENT THE RECORD

On April 21, 1997, Gulf Utility Company (Gulf) filed a Motion to Supplement the Record. In its motion, Gulf asks that the Commission accept as part of the record in this docket, the draft minutes from the April 2, 1997, meeting of the Board of County Commissioners of Lee County (Board). The minutes indicate the Board's approval of a Low Demand Period Reclaimed Rate of \$.04 per thousand gallons for reclaimed water used during the period from March 1, 1997, through May 31, 1998, to encourage use of the Fort Myers Beach Wastewater Treatment Plant reclaimed water by the reuse customers.

In support of its motion, Gulf states that at the March 5, 1997 hearing in this docket, reference was made to Lee County reducing its reclaimed water rate to \$.04 per 1,000 gallons, and that the draft minutes submitted with Gulf's motion show the Board took such action on April 2, 1997.

In addition to the draft minutes, Gulf filed a letter dated April 15, 1997, from the Lee County Minutes Supervisor. This letter states that the Lee County Minutes Office is unable to certify the draft minutes until after the minutes are approved by the Board, and that approval is requested only after outstanding documents have been received.

None of the parties have filed an objection to Gulf's motion. Upon review, I find that the proposed exhibit is probative, relevant and material to the issues in this case. However, the exhibit with which Gulf seeks to supplement the record has not been authenticated under the applicable evidentiary rules.

05035-97

Florida's Evidence Code provides that:

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required for: . . . (4) A copy of an official public record, report or entry, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification . . .

Section 90.902(4), Florida Evidence Code (1996) (emphasis added). Furthermore, Section 90.955, Florida Evidence Code states that:

(1) The contents of an official record or of a document authorized to be recorded or filed, and actually recorded or filed, with a governmental agency, either federal, state, county, or municipal, in a place where official records or documents are ordinarily filed, including data compilations in any form, may be proved by a copy authenticated as provided in s. 90.902, if otherwise admissible.

(2) If a party cannot obtain, by the exercise of reasonable diligence, a copy that complies with subsection (1), other evidence of the contents is admissible.

Section 90.955, Florida Evidence Code (1996).

Since the draft minutes have not been certified by the appropriate public records custodian, and Gulf has not demonstrated that it could not, with reasonable diligence, obtain an authenticated copy pursuant to Section 90.955(2), Florida Code of Evidence, Gulf's Motion to Supplement the Record is denied.

Based upon the foregoing, it is, therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Gulf Utility Company's Motion to Supplement the Record is hereby denied.

ORDER NO. PSC-97-0577-PCO-WS
DOCKETS NOS. 960329-WS, 960234-WS
PAGE 3

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 20th day of May, 1997.


J. TERRY DEASON, Commissioner and
Prehearing Officer

(S E A L)

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.

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.