



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
904-488-9330

October 30, 1997

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket Nos. ~~960329~~-WS and 960234-WS

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of a Notice of Specific Errors in Gulf Utility Company's Notice of Specific Errors in Staff Memorandum of September 25, 1997 for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing the Notice of Specific Errors in Gulf Utility Company's Notice of Specific Errors in Staff Memorandum of September 25, 1997, in WordPerfect for Windows 6.1. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,


Stephen C. Reilly
Associate Public Counsel

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SCR/dsb
Enclosures

C: STEVE GULFBAYO@FLR

RECEIVED & FILED

EPSC DIVISION OF RECORDS

DOCUMENT NUMBER-DATE

11201 OCT 30 97

EPSC RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of GULF UTILITY COMPANY for an increase in Wastewater Rates, approval of a decrease in Water Rates and approval of service availability charges in Lee County, Florida)	Docket No 960329-WS
In re: Application for increase in rates and service availability charges in Lee County by Gulf Utility Company)	Docket No 960234-WS Filed October 30, 1997

NOTICE OF SPECIFIC ERRORS IN GULF UTILITY COMPANY'S NOTICE OF SPECIFIC ERRORS IN STAFF MEMORANDUM OF SEPTEMBER 25, 1997

The Citizens of the State of Florida ("Citizens"), by and through their undersigned attorney, file this Notice of Specific Errors in Gulf Utility Company's ("Gulf, utility or company") Notice of Specific Errors in Staff Memorandum of September 25, 1997

1 The Utility suggests an error in the Staff's Memorandum under issue two at page seven. Specifically, the Utility suggests that Staff failed to recognize that all of the \$10 million of debt is invested in utility plant that is presently in service. (Notice at p 1.) There is no error in the Staff's Memorandum. Staff's Memorandum at page seven, reiterates the arguments of the Office of the Public Counsel in its response to the Utility's Motion for Reconsideration. The Staff's Memorandum, then goes on to explain, on page seven, why the Utility's request for reconsideration is inappropriate. The Staff correctly concluded that the Commission fully considered all evidence presented and found that the final rates were just, fair and reasonable. Likewise, the Staff concluded that "[i]t is apparent from Gulf's arguments that it is merely dissatisfied with the outcome of the hearing. Therefore, Gulf's arguments are inappropriate for reconsideration...." (Memorandum, at p. 7.)

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2. As to the merits of the Utility's arguments, that "all of the \$10 million of debt is invested in utility plant that is presently in service," the Utility is wrong. As the Commission's Order finds that the total rate base of the Utility's water and wastewater operations is \$6,613,242, the entire \$10 million of debt is not invested in utility plant that is presently in service and serving current customers. (Commission Order No. PSC-97-0847-FOF-WS, Schedule Nos. 1-A and 1-B.) Furthermore, even adding in the plant the Commission found to be nonused and useful, the total rate base (used and useful and nonused and useful) of the utility is only \$8.6 million. Contrary to the Utility's statements, the entire \$10 million of debt is not invested in utility plant that is presently in service. In addition, the Utility's claims in its Notice are divergent from the testimony of Mr. Moore. In his rebuttal testimony, Mr. Moore stated that the Utility was losing money because of the difference between the interest it could earn on the unused portion of the \$10 million of Industrial Development Revenue Bonds and the interest rate that it was required to pay on those bonds. Mr. Moore testified:

However, starting in 1989, the losses and/or depressed earnings are in large part related to the IDRB loans earmarked for construction and the interest income from temporarily investing this money in government securities as the bond indenture required was over \$1,500,000. This was the stockholders' loss. (Tr 543-44.)

The Commission should reject the Utility's suggestion of error and uphold the Staff's recommendation.

3. Next, the Utility suggests that the Staff's Memorandum is in error because in issue five on page 14, the Staff says that there were no projected flows for 1996. The Utility then proceeds to cite where projections can be found in the record. The Utility's characterization of the Staff's Memorandum is in error. The Staff's Memorandum stated that the " utility filed MFRs containing 1995 flows with no projections for 1996. There is no precedent for the Commission utilizing growth

figures by projecting future flows in lieu of the flows provided by a utility in its filing." (Memorandum at p. 14.) The projections to which the Utility cites are the growth figures which the Commission rejected and to which the Staff's Memorandum states there is no precedent for use in lieu of flows provided by the Utility in its filing. The projections (which are really growth estimates) were further found to be in error and overstated. Furthermore, it would be entirely inappropriate to include in the 1996 growth estimates the flows from the University because, as the Staff Memorandum points out, the flows were not even scheduled to begin until August 1997, well past the end of the 1996 test year. Similarly, the flows presented by the Utility for the University were substantially overstated and when corrected flows are evaluated they are insignificant when compared to the five day maximum flows. Furthermore, there was no evidence presented that the University flows would even contribute to the five day maximum flows. For example, with respect to at least two of the five days, the University would most likely not have contributed to the peak day flow since March 25th and 26th of 1995 were on a Saturday and Sunday, respectively, when the University, if had been operating, would not be experiencing any significant flows because classes are not held on the weekend. The Staff Memorandum is not in error.

4. The Utility next argues that in issue five, page 15, there is a Staff error in the revenue as a result of adjusting for changes in customer growth. And that a second error is found in Staff's position when it imputes CIAC for growth included in margin reserve. Concerning the first alleged error, the Utility does not state how or what error was allegedly committed. Furthermore, the Commission explained on page 47 of its Order, why it was appropriate to make no adjustment to the revenues associated with the University. There is no error, as suggested by the Utility, associated with revenues as a result of adjusting for changes in customer growth. With respect to the second alleged

error, the Utility claims that when Staff imputes CIAC for growth included in margin reserve, it doubles the CIAC associated with customer growth in 1996 already included in rate base. This is simply not the case. The CIAC included in rate base associated with the 1996 projected test year matches the 1996 investment included in rate base associated with the 1996 test year. The amount of CIAC associated with margin reserve is separate and distinct from the amount related to the 1996 test year. Furthermore, the amount of CIAC associated with the water operation's margin reserve was limited to \$193,700 which was the amount of plant included in rate base associated with margin reserve. The amount of wastewater CIAC associated with the wastewater margin reserve was based upon the amount of prepaid CIAC on the books of the Utility and was not an imputed amount of CIAC. Therefore, there was no double counting of CIAC associated with margin reserve included in either the water or wastewater rate base. The Staff Memorandum is not in error.

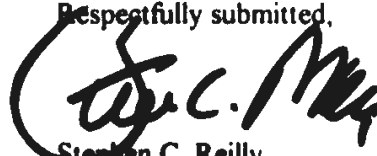
5. The next claimed error concerns issue six on page 16 of the Memorandum, wherein the Utility claims that the information necessary to determine the amount of Phase 3 of the Three Oaks WWTP can be determined for purposes of applying a nonused and useful percentage to that portion of the plant only. The Staff Memorandum indicated that the Utility failed to segregate the funds by individual plant in its filing. Consequently, the Commission had no alternative but to apply the nonused and useful percentage to all three phases of the plant. Essentially, the Utility failed to meet its burden of proof. In its motion for reconsideration the Utility provided appendix E, which it claimed showed the amount of Phases 1 and 2 that should be removed and the balance, Phase 3, being the amount that a nonused and useful percentage should be applied to. The Staff in its Memorandum correctly rejected the introduction of the new evidence attached as appendix E to the Utility's Motion for Reconsideration. Now, the Utility claims that the information needed to determine the amount of

Phases 1 and 2 can be obtained by merely subtracting Phase 3 from the total investment. The amount of Phase 3, the Utility claims can be found on page 171 Note 1 of Exhibit 8, the Utility's MFRs. While there is an amount for Phase 3 contained on the page referenced by the Utility, the amount is for the year ending 1995, not 1996. The page referenced by the Utility was used for purposes of determining interim rates not final rates. Interim rates were based upon an historical 1995 test year where as final rates are based upon a projected test year ending 1996. Thus, the amount for 1995, for Phase 3, cannot be used to subtract from the 1996 total investment in Phases 1, 2, and 3. This is further substantiated by the fact that the Phase 3 amount found on page 171 of Exhibit 8 does not match the 1996 amount found in Appendix E to the Utility's Motion for Reconsideration. The Staff's Memorandum was not in error, the Utility's suggestion of error is erroneous.

6. Finally, the Utility suggests that the Staff Memorandum misstates Gulf's position and the facts of the case with respect to Issue 8. The Memorandum does not misstate the facts of the case. To the extent the Utility's position is misstated, any misunderstanding of the Utility's position does not make the Staff's recommendation invalid or in error. As to the facts of the case, the Staff Memorandum clearly states that accumulated amortization for CIAC was determined, based upon 13-month average for the year ending August 1996. This was the best available evidence and appropriately used by the Commission. The Utility made this same argument during the hearing and the Commission rejected it. Neither the Staff, nor the Commission, used an "unapproved" test year as alleged by the Utility. Accordingly, the Staff's Memorandum correctly concluded that the Commission should not reconsider its decision on this issue. There is no error in the Staff Memorandum, the Utility merely complains because it does not like the end result.

WHEREFORE, the Citizens respectfully request the Commission to disregard Gulf's Notice of Specific Errors in Staff Memorandum of September 25, 1997 and approve the Staff's recommendations concerning Gulf's Motion for Reconsideration.

Respectfully submitted,



Stephen C. Reilly
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

(850) 488-9330

Attorney for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U S. Mail or *hand-delivery to the following parties on this 30th day of October, 1997.

B. Kenneth Gatlin, Esquire
Gatlin, Woods & Carlson
The Mahan Station
1709-D Mahan Drive
Tallahassee, FL 32308

*Tim Vaccaro, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



Stephen C. Reilly
Associate Public Counsel