BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of SOUTH BROWARD UTILITY, INC. for a rate increase in Broward County	)	DOCKET NO. 890360-WS ORDER NO.23305 ISSUED: 8-3-90

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
GERALD L. GUNTER

ORDER DENYING MOTION FOR RECONSIDERATION IN PART AND GRANTING IN PART

BY THE COMMISSION:

BACKGROUND

By Order No. 22844, issued April 23, 1990, we established final rates and charges for South Broward Utility, Inc. (South Broward or utility). The Order granted annual water revenues of $664,088 and annual wastewater revenues of $643,217. These revenues represent annual increases of $269,066 (68.11 percent) for water and $70,824 (12.37 percent) for wastewater.

On May 8, 1990, South Broward filed a timely Motion for Reconsideration. The utility asked for reconsideration of five matters, which are individually addressed below. Intervenor Public Counsel did not file a response to the Motion. The utility's request for oral argument was denied by Order No. 22951, issued May 17, 1990.

MOTION FOR RECONSIDERATION

1. Requirement to mail utility bills

In Order No. 22844, we required the utility to improve its billing delivery system by using the U.S. Postal Service rather than delivering its bills by hand. South Broward seeks reconsideration of this matter, stating the method of delivering bills is a decision best left to management. Management believes that its practice of delivering bills is the most efficient and effective method for use in the area served by the utility and that it is a cost saving measure and ensures prompt delivery of bills and delinquency and termination notices. The utility also states that if it is required to mail bills, mailing expense of $7,014 for postage

should be included in its rates. Further, the utility argues that there are additional advantages resulting from employee visits in the service area such as observing the filling of swimming pools, the overwatering of lawns, unreported broken lines and leaks and thefts from fire hydrants.

Utility witness Corbitt testified that it is not unusual for the utility to receive payments with a postmark 10-14 days earlier. He admitted that this did not happen all the time. The other facts raised by the utility in its motion are not reflected in the record. While we recognize that the utility will incur additional postage expense by mailing the bills and notices, the record does not reflect the cost nor does it address the savings in labor since certain employee(s) will no longer be delivering the bills and notices. We do not believe that the record supports the claim that the utility benefits from having employees in the field to observe the various uses of water. There was considerable testimony surrounding the fact that the utility is often unaware of the instances when lines are broken and water is stolen.

The utility further argues that by using the U.S. mail, disputes concerning the dates of receipt of the bills will increase as will the number of delinquent bills, the number of customers whose service will be terminated, and the frequency that South Broward will be required to prepare bills setting forth past due amounts. In addition, the utility claims that none of the customers who complained about the system asserted that they failed to receive a bill.

There is no evidence to support the utility's argument that the number of delinquent bills will increase if the US mail is used. The utility may be correct in that the customer testimony does not reflect that anyone did not receive a bill. However, a customer did testify that he did not realize that the bill was at his front door until two days before the bill was due and his water was turned off for delinquency. We believe that either method of delivery may create disputes over the date of receipt. While the hand delivery method may assure the utility that the bill was delivered, it was pointed out by customer testimony that the customers may not always be aware of delivery as the front door is not an often used point of entry.

We fully considered the record in making our decision to require the use of the US mail. The utility has not pointed out any portion of the record which we did not consider in making our decision or any error on our part. The utility simply disagrees with our decision. Therefore, we will not reconsider our decision on this point.

2. Unaccounted-for-water

The Commission found that the utility had 15 percent excessive unaccounted-for-water and reduced the associated costs for purchased power and chemicals accordingly. The Commission allowed 10 percent unaccounted-for-water, stating that a 10 percent level is a reasonable amount for a well-run utility. The record does not support the utility's belief that it has no excessive water losses because of its constant construction due to the rapid development of its service area.

In its Motion for Reconsideration, the utility states that a 10 percent level is not appropriate in light of the constant growth and expansion South Broward had experienced in the test year. However, the 10 percent level allowed is not based on growth, or on the comparison of one type utility to another. As we stated in the Order, a 10 percent level of unaccounted-for-water is a reasonable amount to be incurred by a well-run utility. An important consideration is the utility's inability to meter its water uses. In its Minimum Filing Requirements (MFRs), the utility showed a 0% unaccounted-for-water and 25 percent for "other uses." During cross-examination, the utility's witness could not quantify any of the items in the list of water uses under "other uses." It is apparent from the testimony that this list is merely a best guess as to where all the unsold water went. Since the utility does not meter water which it classifies as "other uses", by definition this water is "unaccounted for." In the future, the utility should make an effort to meter what it classifies as "other uses" so that a delineation of other uses can be determined.

The utility states in its Motion that water used in hydrant flushing, wastewater treatment plant operation, distribution line construction, losses due to breaks, water treatment plant operation and thefts amounts to a larger percentage for a small utility than a large utility. However, there is no testimony on the record to support this statement. Nor is there testimony to support its conclusion that a

reasonable percentage of unaccounted-for-water for the utility would exceed the reasonable percentage of accounted-for-water for a fully developed company experiencing no growth or expansion of its system.

The utility's Motion did not show that the Commission failed to consider the facts in the record, nor did it show any error in the Commission's decision. Therefore, we will not reconsider our determination regarding this matter.

3. Refund of unauthorized guaranteed revenue charges

The record shows that South Broward began making the guaranteed revenue charges to developers at or about the same time it began its operations. The first developer agreement in the record is dated October 17, 1985 and is between Ivanhoe Land Investments, Inc., an affiliated company, and South Broward. The utility's guaranteed revenue charges are the same as the minimum charge for water and wastewater, that is, $6.00 for water and $13.00 for wastewater, for a total of $19.00 per equivalent residential connection (ERC) per month. The evidence in the record shows that these charges were not authorized by the Commission. Order No. 22844 required the unauthorized charges to be refunded, with interest, and in accordance with Rule 25-30.360, Florida Administrative Code.

The utility argues several points in its Motion. First, it argues that the guaranteed revenue charges were approved by the Commission and refers to Original Sheet No. 29.3, Paragraph C of the Water Tariff and Original Sheet No. 23.3, Paragraph C of the Sewer Tariff. In pertinent part, Paragraph C states

> Utility Company, may, in connection with said loan, require the Owner to enter into a Guaranteed Revenue Agreement that shall provide for payment to Utility Company of a monthly sum sufficient to defray the cost of operation, maintenance, depreciation and payment of debt amortization and interest and to provide a reasonable rate of return to Utility Company on the utility plant that will be used to provide service to the Owner's development.

There is no evidence in the record or in the developer agreements to indicate that the utility required any owner to lend funds to the utility company to finance construction of treatment plant capacity, mains, lines and other facilities necessary to serve the owner's development.

Original Sheet No. 29.6, Paragraph H, of the Water Tariff and Original Sheet No. 23.6, Paragraph H, of the Sewer Tariff states the following with regard to the developers:

> Plant Capacity Charges - The Utility Company agrees to provide adequate potable water treatment and domestic sewerage treatment without a plant capacity charge. As its contributions-in-aid-of-construction, Developer shall be required to install all water transmission and distribution lines and mains and all sewage collection and transmission lines and mains necessary to provide service to his development. See Original Sheet No. 29.0.

It is unlikely that the Commission would have approved guaranteed revenue charges equal to the minimum charges, as the water minimum charge of $6.00 per month includes a minimum gallonage allowance of 3,000 gallons and the wastewater minimum charge of $13.00 per month includes the collection and treatment of up to 4,780 gallons of wastewater. Coupled with the fact that a "Developer shall be required to install all water transmission and distribution lines and mains and all sewage collection and transmission lines and mains necessary to provide service to his development," the $6.00 water and $13.00 wastewater guaranteed revenue charges most likely could not have been supported if the utility had requested approval.

Secondly, the utility claims that the developer agreements between South Broward Utility and developers who have developed real property within the service area of South Broward Utility all contain provisions relating to guaranteed revenue. The utility quotes the following from a typical developer agreement:

> 19. Limited Reservation of Capacity and Guaranteed Revenue. Developer or its assigns shall pay to Service Company the amount of guaranteed revenue for the provision of water and sewer utility service established in accordance with Service Company's Tariff. Said guarantee shall remain in

> effect for each ERC until a paying customer is connected to Service Company's lines. Said guaranteed revenue, in the amount of the minimum charge for water service and the minimum charge for sewer service or in such other amount as may be specified in Service Company's Tariff at the time each such payment falls due, as such amount may be modified from time to time, shall be paid monthly to Service Company by Developer . . ." (Emphasis added).

We do not disagree that this clause is included in the developer agreements. Such agreements were entered into evidence at the hearing and were used as a basis for cross-examination. The argument by the utility leads us to believe that the utility does not yet understand that the only lawful charges that can be included in the developer agreements are those charges which have been authorized by the Commission. The record is clear that the guaranteed revenue charges had not been authorized by the Commission.

Thirdly, the utility states that the Commission has authority to waive its own rules in appropriate circumstances and has done so on numerous occasions and cites two cases as examples.

In Docket No. 870776-WS, a staff-assisted rate case, the utility had an authorized water service availability charge, but not one for wastewater. The utility entered into two developer's agreements to charge water and wastewater service availability charges and later charged an unauthorized tap-in charge. The issue addressed in that docket was contributions-in-aid-of-construction. The Commission determined that the amount charged appeared to be reasonable and by allowing the utility to keep these amounts, it would reduce the utility's investment and benefit all customers.

South Broward's collection of guaranteed revenue charges in the instant case were not authorized by the Commission and appear to be unreasonable in light of the contributions-in-aid-of-construction required to be made by the developers.

The other case relied on is another staff-assisted rate case (Docket No. 881108-SU). That utility's existing flat rate was "grandfathered" when the Commission obtained jurisdiction in that county. Subsequently, the utility was transferred and

the transfer order did not address rates because the Commission's customary practice is to continue a utility's existing rates when it is purchased. When the utility later applied for a staff-assisted rate case, it was its first rate case application since it came under our jurisdiction. It was during the process of this application that we discovered that the utility was making a "vacant lot" charge. We note that, unlike South Broward, wastewater service had been installed to provide service to all the lots located within the Mobile Home Park.

The utility was making a "vacant lot" charge on the date it came under the jurisdiction of the Commission. No Order specifically addresses this matter. However, as a general rule, the rates and charges in effect on the jurisdictional date are "grandfathered" and remain the lawful rates and charges until such time as they are changed by the Commission. They were changed in the staff-assisted rate case.

Thus, the two cases are distinguishable from the instant case.

Lastly, the utility argues that if the refunds are required, they should not be made with interest. The utility seeks permission to offset the refunds against future service availability charges incurred by developers. South Broward cites a case (Docket No. 850079-WU) wherein a utility overcharged a customer by charging residential rates instead of developing a new class of service for that customer. The refund was made by way of a credit on the bill.

We believe that case is also distinguishable from this one. In Docket No. 850079-WU, we approved a stipulated agreement between the utility and the customer with regard to a classification error in billing. In this case, we are addressing the collection of unauthorized guaranteed revenue charges.

South Broward's final argument is that to require it to refund previously collected guaranteed revenues would serve only to have South Broward Utility incur losses in addition to the very substantial losses that already have been incurred in providing utility service to the public.

Upon consideration, we find that the utility has not shown any error or omission in fact or law related to our decision on this issue. The request for reconsideration is denied.

4. Rate case expense

In Order No. 22844, the Commission allowed $117,758 in rate case expense, which was a $76,542 reduction from the $194,300 requested. The utility states in its Motion that the $194,300 spent on rate case expense falls well within the range of reasonableness for this rate case. The utility details numerous items which contributed to the level of rate case expense; however we considered those in arriving at our decision.

The utility argues that the minimum filing requirements (MFRs) for a Class C utility are not substantially different than the MFRs for a larger utility. While the proposed MFRs used at the time of this filing were very similar in size, there is no evidence in the record to indicate whether certain schedules are easier to complete for a small utility than for a larger utility. The utility also fails to point out that since the utility is a Subchapter S Corporation several schedules were not necessary.

The utility's motion also addresses several specific adjustments made to the rate case expense which are addressed below.

a. Filing Fee

The Commission removed $4,500 from rate case expense under the assumption that the utility reflected the filing fee twice. However, as the utility pointed out in its Motion, the utility was required to file two separate filing fees - one for the rate request and one for the service availability request. Exhibit 4 is the letter sent to the utility detailing the deficiencies in the initial filing. Item 29(D) explains that any request for increased service availability charges requires a filing fee. We agree that an error was made in removing the second filing fee and will therefore reconsider our decision on this point. Accordingly, the rate case expense allowed in Order No. 22844 should be increased by $4,500.

b. Deficient Filing

The utility's requested rate case expense included significant costs related to correcting the forty deficiencies shown in Exhibit 4. As a result of this concern, we reduced rate case expense by $42,194 to eliminate the estimated cost of

correcting the deficiencies. In its motion, the utility points out that this filing was one of the first to use the proposed revised Class C MFRs and that it was a learning experience for both the consultants as well as staff. The accounting consultants did not bill $30,981 in recognition of this fact. Further, the consultants worked with Commission staff to determine what would be required in a projected test year filing. The utility argues that the accounting consultants met with staff and that the record clearly indicates that the initial MFRs were filed in accordance with the instructions of the staff. The utility concludes that $73,175 is not a reasonable estimate of the learning experience.

These arguments were all considered by the Commission in issuing Order No. 22844.

The utility further argues that of the forty deficiencies shown in Exhibit 4, 24 are related to: 1) the use of a simple average rather than a thirteen-month average, and 2) the submission of individual schedules for the historic, projected and intervening test years. We agree that a number of the deficiencies related to the filing of a simple average rather than a thirteen-month average. Because the utility filed for a waiver of the rule requiring a thirteen-month average, those "corrections" did not take place and did not result in additional rate case expense. However, Order No. 22844 adjusted rate case expense based on hours and dollars, not on the number of deficiencies. Therefore, this argument does not affect the Commission's decision.

We believe that the record supports our decision to adjust rate case expense for the deficient filing.

c. Legal Fees

The utility argues in its motion that the Commission should not reduce rate case expense for an amount related to the presence of two attorneys at the various conferences and the hearing. The utility states that all of the preparation for certain issues was handled by one attorney and all of the other issues were handled by the other attorney. The second attorney was essential at the hearing and meetings in order to assure that all the information was obtained or covered. The utility argues that there were fewer representatives of South Broward at the hearing than staff members. The number of staff is irrelevant in determining the reasonable and prudent costs

of the utility. We note however, that many of the staff in attendance at the hearing were new employees and in attendance as part of their training.

Order No. 22844 discusses the fact that the record does not justify the attendance of two attorneys. We do not believe that the utility's motion has shown any error in the Commission's decision nor any facts not considered by the Commission. Therefore, the adjustment to rate case expense for the duplicate attorney's hours should not be reconsidered.

The utility's motion also discusses the adjustment to the expense for the travel related to the second attorney. The motion points out that all the travel was by automobile and in most, if not all instances, the accountants and attorneys traveled together. Therefore, the adjustment to travel is inappropriate. We agree that this fact was not considered. Therefore, we will reconsider our decision on this point and adjust rate case expense to include the $427 disallowed in Order No. 22844 for travel.

The utility also argues that Order No. 22844 adjusted legal fees as the attorneys did not appear to be prepared for the Prehearing Conference. The motion continues by stating that the attorneys had in fact prepared a list of positions but the time spent at the Prehearing Conference was in reviewing the draft prehearing Order, and that the staff attorney who prepared the staff recommendation and Order No. 22844 was at a disadvantage because a different staff attorney was present at the Prehearing Conference. We disagree with the utility's portrayal of events. The Commission had several staff members at the Prehearing Conference and these same staff members prepared the staff recommendation. When the staff attorney assigned to the case could not attend the Prehearing Conference due to a death in the family, another staff attorney was substituted to cover that proceeding. However, we are informed that there was considerable conversation and cooperative work between the two in reviewing the proceeding. Thus, we do not believe that the utility has shown any error in the Commission's decision and the remainder of the legal fees should remain as shown in Order No. 22844.

d. $10,000 Reduction

Order No. 22844 discussed the fact that the utility did not supply sufficient detail regarding rate case expense such that the Commission could review the rates charged and the hours spent on various tasks performed by the consultants. The Commission found it appropriate to reduce rate case expense by $10,000 to reflect the overall insufficient detail of the accounting and legal fees imprudently accepted by the utility. In its motion, the utility argues that the Commission should not make this adjustment. The utility believes that there was sufficient detail for the Commission to make adjustments to rate case expense in the amount of $213, $427, $510, $632 and $1,148; therefore, it does not follow that there is insufficient detail in the supporting documents for rate case expense.

We are unpersuaded by the utility's argument. We do not believe the record contained sufficient detail for us to comprehensively review hourly rates and hours spent on specific tasks. Further, the referenced adjustments make assumptions as to the hours spent on the task, as well as the related hourly rate. We do not believe that the utility has shown error on our part in making this adjustment or that this adjustment is inconsistent with the other adjustments we made.

e. Estimate to Complete

The utility's motion states that at the hearing South Broward was requested to provide a late filed exhibit setting forth the estimated cost of completing the case. Schedule 22C sets forth an estimate of 59-94 hours for completion of the case. The exhibit shows broad ranges, with no detail relating to who would be performing the work and at what rate. It is not up to this Commission to calculate the utility's expenses. It is the utility's responsibility to provide adequate and detailed records to support its case. We do not believe that the motion has shown any error in our decision. Therefore, we will not reconsider the exclusion of costs related to completion of the case.

f. Conclusion

As previously discussed, two items should be adjusted. Our review of the reconsidered items indicates that the appropriate level of rate case expense should be increased by $4,927. However, when this amount is amortized over four

years, divided between water and wastewater and grossed up for regulatory assessment fees, the result would be a $645 increase in both water and wastewater revenue requirements. This amounts to a .01% increase in the water revenue requirement and a .10% increase in the wastewater revenue requirement. These are immaterial amounts. Accordingly, we find that no adjustment is necessary.

5. Working Capital

Order No. 22844 calculated a working capital allowance of $58,840. This is $419,033 less than what the utility requested in its MFRs and is the result of numerous adjustments as detailed in the Order. The utility states in its motion for reconsideration that the reduction of cash to a zero balance results in an absurd conclusion. Therefore, the result should be changed. The utility now proposes that the working capital should be calculated using the 1/8 formula approach instead of the balance sheet approach as supported in its MFRs. However, the utility is arguing that the working capital should be calculated using information that is not in the record. It is the utility's burden to present its case at the hearing. It presented its case on working capital using the balance sheet method. It cannot ask to have the methodology for calculating working capital changed after the record is closed. The 1/8 methodology was not presented at the hearing and Public Counsel and the staff were not given an opportunity to examine the method and/or cross-examine any witnesses on the appropriateness of the methodology.

Accordingly, the request for reconsideration of our decision on the working capital allowance is denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration filed by South Broward Utility Company is granted in part and denied in part, as set forth in the body of this Order. It is further

ORDERED that this docket may be closed upon the utility's completion of the required refund of guaranteed revenue charges and staff's verification of its accuracy and upon its filing of revised tariff sheets and customer notices and staff's approval of them.

By ORDER of the Florida Public Service Commission this 3rd day of August, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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 the Commission's final action in this matter 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 sewer 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.