BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Interim and Permanent Rate Increase in Franklin County, Florida by ST. GEORGE ISLAND UTILITY COMPANY, LTD.
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DOCKET NO. 940109-WU
Filed: December 27, 1994

REPLY OF ST. GEORGE ISLAND UTILITY CO., LTD. TO "RESPONSE TO MOTION FOR RECONSIDERATION" AND RESPONSE TO "CROSS MOTION FOR RECONSIDERATION"

Petitioner St. George Island Utility Company, Ltd. ("SGIU"), in accordance with Rule 25-22.060, Florida Administrative Code, files this Reply to the "Response to Motion for Reconsideration" and this Response to "Cross Motion for Reconsideration" that have been filed by Public Counsel. SGIU states as follows:

1. This is a proceeding in which SGIU has sought approval of interim and permanent rate increases. The Florida Public Service Commission rendered its final order on November 14, 1994. SGIU filed a "Motion for Reconsideration." Public Counsel has filed a "Response to Motion for Reconsideration" and a "Cross Motion for Reconsideration." SGIU's Motion for Reconsideration should be granted. Public Counsel's Cross Motion for Reconsideration should be denied.

I.

PRELIMINARY MATTERS

2. Public Counsel has asserted that certain preliminary matters set out in SGIU's Motion for Reconsideration, which Public Counsel characterizes as "allegations" are unsupported by the record. The assertion and the characterization are both inaccurate.

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3. First, Public Counsel takes issue with SGIU's statement in Paragraph 1 of its Motion for Reconsideration that the Commission's staff participated in the proceeding as a "party." This is not an allegation that is unsupported by the record. It is a statement of a legal conclusion that is inescapable and that could not be unnoticed by anyone who participated in this proceeding or who has reviewed the record. A "party" is defined in the Florida Administrative Procedure Act as including:

> Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party.

Section 120.52(12)(c), Florida Statues. Certainly agency staff members participated in this proceeding and were allowed to do so by the agency. That the participation was as a party is amply demonstrated by what the Staff did. The Staff was represented by counsel, responded to arguments, initiated and participated in discovery, presented evidence and argument on issues, conducted cross-examination and submitted rebuttal evidence. These are the very activities that "parties" are permitted to do in administrative proceedings. Sections 120.57(1)(b)4, 120.58, Florida Statutes.

4. Citations to portions of the record that show participation by staff as a party are not necessary. It is reflected in many prehearing requests for discovery, motions, responses to motions, and issue statements. It is reflected in the fact that the Staff called witnesses, cross-examined witnesses and presented documentary evidence. Indeed, an accurate reference to the record would simply be to look anywhere.

5. Second, Public Counsel asserts that the statement in Paragraph 2 of the Motion for Reconsideration that SGIU is adversely affected by provisions of the Commission's Final Order is not supported by the record. It is certainly correct that nothing in the evidentiary

record of this proceeding directly states: "SGIU is adversely affected by the Commission's Final Order." However, since the order was not entered until after evidence was presented, it would be quite odd to find such a statement. To assert, however, that SGIU is not adversely affected by provisions of a Final Order which significantly reduce prior findings of the Commission regarding SGIU's original cost and its rate base is ridiculous. The record amply demonstrates that SGIU has requested a rate increase based upon an original cost determination previously made by the Commission and that the Commission has changed its prior determination to the detriment of SGIU. While the Commission has approved a more limited rate increase than SGIU requested, the record demonstrates that SGIU's entitlement to a reasonable return on its investment has been reduced. This is an adverse affect.

II.

REPLY TO ISSUES ON RECONSIDERATION

A.

Failure to Credit CIAC to Plant in Service

6. Rather than present any meaningful response to these issues, Public Counsel has simply asserted that the Commission did not make mistakes as detailed in the Motion for Reconsideration, or that SGIU's position is not supported by the record. Public Counsel's assertions are inaccurate. Mistakes were made. The record demonstrates it. The mistakes should be corrected.

1. **<u>Duplication of Proforma CIAC Adjustment.</u>**

7. SGIU contends that the Commission mistakenly duplicated a Contribution In Aid of Construction ("CIAC") entry and erroneously overstated the CIAC balance when it

adjusted SGIU's 1992 average CIAC balance to an average 1993 level. The duplication occurred because SGIU's 1992 average CIAC balance already included fifty percent of $22,220 in CIAC that was received in 1993 and booked in 1993. This was done as a proforma adjustment to the 1992 test year. Strangely, Public Counsel states that evidence of this fact was not presented at the hearing. In its Motion for Reconsideration, SGIU referenced Exhibit 1, MFR Schedule A-3. Line 25, Schedule a-12, column 8, which shows the entry. See: Motion for Reconsideration at page 6, Paragraph 10. Schedule A-3 is tilted "Schedule of Adjustments to Rate Base." It describes the fifty percent of the $22,220 included in rate base as "Proforma 1993 CIAC that was netted against proforma 1993 note to partially finance Well #3." The exhibit clearly states that the CIAC in question was from 1993 and included as a proforma adjustment in 1992. The reason that half of it was included is that it was not part of the CIAC balance at the beginning of 1992, was, through the adjustment, made part of the CIAC balance at the end of 1992, so that the average CIAC balance reflected half of the contribution.

8. If that is not clear enough, Mr. Seidman's explanation in his direct testimony should help: "An adjustment was made to Contributions in Aid of Construction to reflect amounts collected in 1993. . . ." Tr. v. 1, pp. 46-47. The testimony and the schedules are not controverted by any evidence in this proceeding. It is clear that the amount collected in 1993 was included in the 1993 balance and not the 1992 balance. That is why a proforma adjustment was necessary to bring it into the 1992 test year.

9. SGIU argued against Public Counsel's position that the approved 1992 test year should be revised to 1993. The confusion caused by this duplication of CIAC balance is

a good example of why going outside of the 1992 test year was a bad idea. Apparently Public Counsel's own witness who advocated relying upon 1993 data was not aware of what was in the numbers she provided to the Commission. The difficulty is that final adjustments were not made until after the hearing by the Commission's Staff in its recommendations to the Commission. Until the Staff's memorandum was received, SGIU could not have known that the Commission would duplicate the CIAC entry in rate base. The only opportunity there has ever been to correct this plain error is through the Motion for Reconsideration.

2. Property Contribution to CIAC Without Matching to Plant in Service.

10. SGIU contends that the Commission's adjustment of SGIU's 1992 average CIAC to an average 1993 level caused an additional understatement of rate base because the Commission did not adjust Plant in Service to reflect adjustments to CIAC. Public Counsel interestingly suggests that SGIU is at fault for not presenting evidence to support this adjustment. How SGIU could have known that Commission staff was going to make this adjustment so that SGIU could have presented evidence to demonstrate that an additional adjustment that follows necessarily from the first one was not made is not explained. There are no citations to the record in this part of the Motion for Reconsideration because SGIU could not have known that such an adjustment would be made to the CIAC balance without the necessary follow-up adjustment to "Plant in Service."

11. Essentially SGIU is being asked to rebut evidence that was never presented. Staff must have examined the 1993 "Plant in Service" account to determine a figure for revising Plant in Service from the 1992 test year to 1993. The same accounts will verify that the CIAC entry was not booked to plant in service in 1993. The fact is easily verifiable.

The only avenue available to correct this obvious error is a motion for reconsideration. The better approach would be for the Commission to return to the 1992 test year, which it approved in the first place, rather than condoning a procedure that allows for unreviewable calculations to be made. If the Commission does not have evidence as to what is included in the 1993 balances, which Public Counsel, the party that advocated use of the balances, now seems to confirm, then the Commission should strike the adjustment in its entirety and retain the 1992 test year.

3. Disallowance of State Park Lines Without Removal of Associated CIAC Received.

12. In its final order the Commission simply eliminated costs for SGIU plant that is located within the State Park by stating: "The costs . . . are not included in this calculation." SGIU disputes this finding, which finds no support in the record. Nonetheless, if the Commission is going to eliminate the costs of plant within the State Park, SGIU contends that CIAC included in SGIU's CIAC balance should also be removed. Public Counsel claims that there is no evidence in the record supporting SGIU's contention that $27,873 of plant within the State Park is included in SGIU's CIAC balance. The claim is obviously being made with no attention to the record. Exhibit "I" to the rebuttal testimony of the witness Gene Brown includes a CIAC listing for SGIU for the period ending December 31, 1992. Exhibit "I" is a part of Composite Exhibit 61, which was received in evidence. Tr. v. 11, p. 1666. The list includes an entry on p. 18 for the State of Florida "State Park" in the amount of $27,873.00. The list is referenced in Mr. Brown's testimony at Tr. v. 9, p. 1314. There is no evidence in the record that rebuts this evidence.

13. Taking the costs of plant in service in the State Park out of SGIU's original cost is itself unsupported by the evidence in the record. Taking the costs out of original cost and refusing to also eliminate CIAC is a mistake that is not only unsupported by the record, it is grossly unfair.

B.

Failure to Credit Engineering Design Fees

14. SGIU contends that the Commission's removal of $21,000 in engineering design fees from SGIU's rate base is a mistake that should be corrected on reconsideration. Public Counsel asserts that the decision is supported by the record. That is true only in a very superficial sense. While the Commission's auditor did state that engineering costs had either been expensed or capitalized, she offered no citation to the books and records of SGIU to support her statement--quite an "unauditor-like" statement. The reason that she offered no support for her statement is that there is none. If the engineering design fees had been previously expensed or capitalized, the fees would have appeared in the appropriate accounts. The reason they were not found and did not appear was that they were not previously expensed or capitalized. There is direct testimony that supports the fact that the fees were not booked and were never entered either as plant or expense. See: Testimony of Frank Seidman, Tr. v. 8, p. 1141. The Commission's order is based upon a mistake and should be corrected.

C.

**Failure to Recognize Travel
of Tallahassee Employees**

15. SGIU contends that allowance for travel for SGIU's administrative employees should be made and included as a proper expense. The Commission's order includes the statement that there is no evidence to support the requested amounts, and Public Counsel supports the assertion. There is, however, as pointed out in the Motion for Reconsideration testimony from several witnesses supporting the requested amounts. See: Motion for Reconsideration, pp. 8, 9, paragraph 17. The statement in the Commission's order that there is no evidence supporting the expense is erroneous.

16. The Commission has no rule requiring utilities to maintain travel logs. Despite that, if the Commission elects to approve less travel expense than SGIU has estimated, it should base its determination on a reasonable resolution of the evidence. It is not reasonable to conclude that no travel expense was incurred. In other instances the Commission has sought to find a middle ground for justifiable expenses. At minimum it should do that in this instance.

D.

**Failure to Consider Legal Fees
Paid by Comparable Utility**

17. The Commission has based its determination of appropriate legal fees on a utility that is in no manner comparable to SGIU. There is evidence in the record as to a utility that is comparable. The Commission's order has based a determination of comparable legal costs on a utility that does not provide its own water and therefore has no need for permitting or other regulatory activity with the Department of Environmental Protection and

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the water management district, that serves a built-out community, that serves a compact service area and that has no issues regarding cross connection problems. The comparison is totally inappropriate as is any comparison based upon some combination of other utilities that are not the same as SGIU. The Commission has made a mistake as to what is comparable and should correct the mistake on reconsideration.

E.

Basing Findings of Fact on Uncorroborated Hearsay Evidence

18. The Bishop appraisals are clearly hearsay. Whether objection was interposed based upon that or not, which it clearly was, it is contrary to law for the Commission to base findings of fact on it. Section 120.58, Florida Statutes; Rule 25-22.048(3), Florida Administrative Code. It is true that SGIU presented the later Bishop report to demonstrate the fallacy of reliance upon the earlier Bishop report, but that does not change the fact that both documents are hearsay and cannot serve as the basis for any finding of fact.

19. Against this hearsay, there is direct evidence supporting the original cost of SGIU--evidence presented by witnesses who were placed under oath, subjected to cross-examination and whose testimony was competent and creditable. The hearsay Bishop reports do not supplement or explain the direct testimony. Public Counsel's assertion that SGIU's witness Wayne Coloney embraced the Bishop reports is not an accurate representation of Mr. Coloney's testimony. What Mr. Coloney stated was that the Bishop report supported a higher original cost than Mr. Coloney had determined without benefit of the report.

20. Public Counsel's assertion that the Bishop reports constitute a party admission is not supported by the record. The only evidence in the record regarding the purpose of the

1978 Bishop report is Mr. Brown's testimony that the document was a market valuation study, not an original cost study. There is no evidence in the record as to why the 1982 report was prepared, at whose instance, or for what purpose. If the Commission is going to use the hearsay to explain or supplement other evidence, it should base that analysis on what the documents explain or supplement. The Commission should not use the documents as independent evidence, as it has done.

III.

RESPONSE TO CROSS MOTION FOR RECONSIDERATION

A.

Rate Case Expense

21. The compensation paid to TMB Associates is a valid rate case expense. That is why the expense was included in the late filed exhibit summarizing rate case expense. SGIU, however, is not seeking to include this justifiable rate case expense in its rate base.

B.

Original Cost

22. Public Counsel argues against the Commission's conclusion that "original cost should be based on what is in the ground." The arguments that Public Counsel is offering are the same arguments it made in the prior rate case proceeding involving SGIU and in this rate case proceeding. No mistake that the Commission made in its order in this case, or other justification for revisiting prior arguments is suggested, and the matter is therefore inappropriate to address in a motion for reconsideration. See: SGIU's Motion for Reconsideration at pp. 2-3, paragraph 5.

23. Public Counsel's assertion that the determination of original cost should not be based upon what is in the ground is in any case in error. Water utilities are required to conform with the 1984 NARUC Uniform System of Accounts ("USOA"). Rule 25-30.115(1), Florida Administrative Code. The USOA requires that utility plan be recorded at the cost incurred by the person who first devoted the property to utility service. 1984 USOA Class "B" Accounting Instruction 13.A. Original cost, as applied to utility plan, means the cost of utility property to the person first devoting it to public service. 1984 USOA Class "B" Definition 21. Utility plant accounts shall be charged with construction costs of the utility plan contributed by others or constructed by the utility using contributed cash or the equivalent, and the costs are estimated if not known. 1984 USOA Class "B" Accounting Instruction 13.D. Plant must be recorded at original cost, regardless of how it was acquired or who paid for the assets.

24. The creditable evidence as to what is in the ground is the testimony of Mr. Coloney and Mr. Seidman. The Commission's determination of who paid for the assets rests in its determination of the level of CIAC. If assets are not paid for by the utility, they must be offset by an amount recorded as CIAC, which, with the exception of amounts addressed in SGIU's Motion for Reconsideration has been agreed upon. Public Counsel's Cross Motion, to the extent that it reveals any mistake at all, reveals that the Commission understated original cost.

CONCLUSION

The Commission should grant reconsideration of its Final Order, revise SGIU's rate base and expenses in accordance with this SGIU's Motion and revise SGIU's approved rates

in accordance with revisions to rate base and expense, and should deny Public Counsel's "Cross Motion for Reconsideration."

Respectfully submitted this 27th day of December, 1994.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail to Robert Pierson and Suzanne Summerlin, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863; to Harold McLean, Associate Public Counsel, Claude Pepper Building, Room 812, 111 West Madison Street, Tallahassee, Florida 32399-1400; and to Barbara Sanders, St. George Island Water and Sewer District, Post Office Box 157, Apalachicola, Florida 32320 this 27th day of December, 1994.

Attorney