

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a rate ) DOCKET NO. 951258-WS  
increase in Brevard County by ) ORDER NO. PSC-96-1456-FOF-WS  
Florida Cities Water Company ) ISSUED: December 2, 1996  
(Barefoot Bay Division) )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON

ORDER GRANTING MOTION TO STRIKE

BY THE COMMISSION:

BACKGROUND

Florida Cities Water Company, Barefoot Bay Division, (FCWC or utility) is a Class A utility providing water and wastewater service for a predominately residential area in Barefoot Bay, Florida. The utility's Barefoot Bay division was serving 4,458 water and 4,440 wastewater customers at year end December 31, 1994. For the twelve months ended December 31, 1994, the utility recorded operating revenues of \$671,582 for water service and \$823,463 for wastewater service. The utility recorded a net operating loss of \$73,769 for the water system and a net operating income of \$77,577 for the wastewater system. The Barefoot Bay system is in an area that has been designated by the St. Johns River Water Management District (SJRWMD) as a critical water supply use caution area.

On November 6, 1995, the utility filed its application for approval of interim and permanent rate increases pursuant to Sections 367.082 and 367.081, Florida Statutes, respectively. On November 6, 1995, the utility satisfied the minimum filing requirements (MFRs) for a rate increase, and we established this date as the official filing date, pursuant to Section 367.083, Florida Statutes. The utility requested that this case be scheduled for a formal hearing and not processed pursuant to the proposed agency action (PAA) process as provided for in Section 367.081(8), Florida Statutes.

The Prehearing Conference was held on March 18, 1996, in Tallahassee, Florida. At the conference, the Prehearing Officer

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granted a petition to intervene filed by Clinton Dyer. We held the technical hearing in Barefoot Bay, Florida, on April 1 and 2, 1996. Approximately 30 customers presented testimony regarding the utility's application for a rate increase.

By Final Order No. PSC-96-1147-FOF-WS, issued September 12, 1996, we approved increased rates for FCWC and issued a Notice of Proposed Agency Action (PAA) imputing contributions-in-aid-of-construction for a grant from the St. Johns River Water Management District to FCWC. On September 24, 1996, Mr. Dyer filed a motion for reconsideration of the final order. On September 27, 1996, the Office of Public Counsel (OPC) filed a motion for reconsideration on behalf of the Citizens of the State of Florida. On October 2, 1996, FCWC filed a Motion to Strike or Alternatively to Require Compliance with Rule Governing Motions for Reconsideration addressing Mr. Dyer's motion for reconsideration. FCWC filed a request for oral argument with its motion. On October 4, 1996, OPC filed a Citizen's Response to Motion to Strike. On October 9, 1996, FCWC filed a Response to Citizen's Motion for Reconsideration and Cross-Motion for Reconsideration. On October 11, 1996, OPC filed a response to FCWC's cross-motion for reconsideration. On October 21, 1996, Mr. Dyer filed a request for oral argument in response to FCWC's motion to strike or require compliance.

#### ORAL ARGUMENT

As discussed earlier in this Order, when FCWC filed its motion to strike or require compliance, it also filed a request for oral argument on the motion as a separate document. On October 21, 1996, Mr. Dyer filed a request for oral argument in which he requested to address us in response to FCWC's motion.

Rule 25-22.058(1), Florida Administrative Code, permits us to grant oral argument, provided that: 1) the request is contained on a separate document; 2) the request accompanies the pleading upon which argument is requested; and 3) the request states "with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it."

FCWC's request for oral argument makes no statement regarding why oral argument would aid us in comprehending and evaluating the issues. Therefore, we find it appropriate to deny FCWC's request for oral argument.

Mr. Dyer's request for oral argument meets none of the requirements set forth in Rule 25-22.058(1), Florida Administrative Code. In fact, the content of Mr. Dyer's request for oral argument is limited to a response to FCWC's motion to strike or require

compliance. Therefore, we find it appropriate to deny Mr. Dyer's request for oral argument. The grounds for Mr. Dyer's response are discussed later in this Order.

Further, we find that FCWC's motion to strike or require compliance and Mr. Dyer's request for oral argument contain sufficient argument for us to render a fair and complete evaluation of the merits without oral argument.

#### MOTION TO STRIKE

As discussed earlier in this Order, on September 24, 1996, intervenor Clinton Dyer timely filed a motion for reconsideration of Order No. PSC-96-1147-FOF-WS. On October 2, 1996, FCWC filed a Motion to Strike or Alternatively Require Compliance with Rule Governing Motions for Reconsideration.

FCWC asserts the following grounds in support of its motion: 1) Rule 25-22.060(2), Florida Administrative Code, states that any motion for reconsideration filed shall contain a concise statement of the grounds for reconsideration; 2) Mr. Dyer's motion for reconsideration is 86 pages long, consisting of three pages of discussion and 83 pages of tables, lists and other materials; 3) Mr. Dyer's motion is so lacking in conciseness, and is so vague and ambiguous, that FCWC cannot intelligently discern the issues raised therein and cannot reasonably be required to frame a response to it; and 4) Mr. Dyer's motion also appears to seek reconsideration of a portion of PAA Order No. PSC-96-1147-FOF-WS. Rule 25-22.060(1)(a), Florida Administrative Code, provides that the Commission will not entertain a motion for reconsideration of a PAA order.

On October 4, 1996, OPC filed a Citizen's Response to Motion to Strike in which it alleged the following: 1) The Citizens have provided substantial assistance to Mr. Dyer and would be substantially affected if FCWC's motion is granted; 2) Mr. Dyer has expended substantial time, effort and other resources to advocate his position before the Commission and has been assured by Commission staff and the Commissioners themselves that the procedural complexities of intervention would not bar consideration of his view of the case; and 3) Mr. Dyer is neither a trained lawyer nor accountant. Additionally, OPC's response requests that we grant FCWC an expansion of time to respond to Mr. Dyer's motion or similar remedy other than striking Mr. Dyer's motion.

Rule 25-22.037(2)(b), Florida Administrative Code, requires that a response to a motion to strike be filed within seven days after service of the motion. FCWC served its motion on October 2,

1996. Mr. Dyer did not file his response until 19 days later. Nevertheless, given Mr. Dyer's lack of familiarity with Commission rules and procedure, we find it appropriate to consider his response.

In his request for oral argument, Mr. Dyer asserts the following: 1) the mistakes of fact or law alleged by Mr. Dyer, which FCWC finds almost impossible to discern, are in the MFRs, testimony and exhibits. Mr. Dyer is not attempting to introduce new evidence, but, rather, evidence in the record omitted from reconsideration by the Commission; 2) Mr. Dyer does not seek reconsideration of the PAA provision in Order No. PSC-96-1147-FOF-WS. Mr. Dyer merely made an effort in his motion for reconsideration to show that an apparent violation of Florida Statutes exists in placing the St. Johns River Water Management District matching grant fund in CIAC, because the amortization of CIAC is paid for by FCWC, Barefoot Bay Division, customers; and 3) justice requires that all issues be understood. Staff's omissions and misconceptions leave the Barefoot Bay citizens with no representation and without a just resolution.

We agree with FCWC's assessment of Mr. Dyer's motion for reconsideration. Like FCWC, we have experienced the same difficulty in attempting to understand what mistakes of fact and law Mr. Dyer attempts to allege in his motion. At 86 pages, Mr. Dyer's motion is far from being concise, as required by Rule 25-22.060(2), Florida Administrative Code. We note that Order No. PSC-96-1147-FOF-WS only totals 74 pages.

Furthermore, we find that Mr. Dyer's motion for reconsideration does, in fact, attempt to seek reconsideration of the PAA provision of the final order, in contravention of Rule 25-22.060(1)(a), Florida Administrative Code. Mr. Dyer even states in his response to FCWC's motion that he was attempting "to point out an apparent violation of Florida Statutes exists in placing the funds in CIAC." Therefore, we find it appropriate to grant FCWC's motion to strike Mr. Dyer's motion for reconsideration, based upon its failure to adhere to the requirements of Rule 25-22.060, Florida Administrative Code.

We finally note that FCWC's Alternative Motion to Require Compliance with Rule Governing Motions for Reconsideration requests relief which we are not authorized to grant. Rule 25-22.060(3)(a), Florida Administrative Code, requires that a motion for reconsideration of a final order shall be filed within fifteen days after the issuance of the order. We believe that granting Mr. Dyer an opportunity to file a revised motion for reconsideration would, in effect, extend the period provided in the rule for filing

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a motion for reconsideration. Florida courts have held that a state agency cannot extend the time for filing a motion for reconsideration beyond the time set forth in its rules. See City of Hollywood v. Public Employees Relations Commission, 432 So. 2d 79 (Fla. 4th DCA 1983).

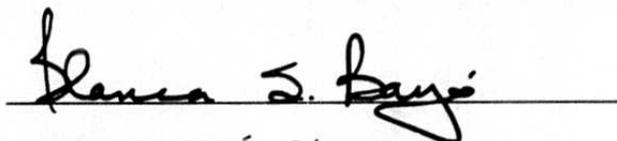
This docket shall remain open pending our decision on OPC's motion for reconsideration and FCWC's cross-motion for reconsideration.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Cities Water Company, Barefoot Bay Division's Motion to Strike is hereby granted. It is further

ORDERED that this docket shall remain open.

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

A handwritten signature in black ink, reading "Blanca S. Bayó", is written over a horizontal line.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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Commissioner J. Terry Deason dissented in the Commission's decision in this docket and would have allowed Mr. Dyer to refile his motion for reconsideration.

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.