

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate) DOCKET NO. 911067-WS
increase by GENERAL DEVELOPMENT) ORDER NO. PSC-92-0197-FOF-WS
UTILITIES, INC. in Charlotte,) ISSUED: 04/13/92
DeSoto and Sarasota Counties)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER GRANTING THE CITY OF NORTH PORT'S
PETITION TO REVIEW CHAIRMAN'S TEST YEAR
DECISION, AND GRANTING GDU'S MOTION TO STRIKE

BY THE COMMISSION:

CASE BACKGROUND

General Development Utilities, Inc., West Coast Division, (GDU or utility) is a Class A utility which, as of December 31, 1990, served 6,605 water customers and 5,397 wastewater customers. The water system had actual operating revenues of \$1,494,774 and a net operating income of \$237,582 for the twelve months ended December 31, 1990. The wastewater system had actual operating revenues of \$1,397,949 and a net operating income of \$189,652 for the same period.

On January 9, 1992, the City of North Port (North Port) filed a Petition for Leave to Intervene and a Petition to Review Chairman's Test Year Decision. By Order No. 25666, issued January 31, 1992, intervention was granted. On January 17, 1992, GDU filed a Response in Opposition To North Port's Petition To Review Chairman's Test Year Decision. On January 29, 1992, North Port filed a Reply to GDU's Response In Opposition To Petition To Review Chairman's Test Year Decision And Memorandum In Support Thereof. On February 3, 1992, GDU filed a Motion To Strike North Port's Reply, Or, In The Alternative, For Leave To Respond Thereto (Motion to Strike).

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PSC-RECORDS/REPORTING

THE PETITION TO REVIEW CHAIRMAN'S TEST YEAR DECISION

In a letter dated December 11, 1991, Chairman Thomas M. Beard approved GDU's requested test years: the historical twelve months ended December 30, 1990, for interim rates and a six month actual and six month projected test year ended December 30, 1991, for final rates. Rule 25-30.430(1), Florida Administrative Code, provides that within thirty (30) days of the Chairman's approval of a test year, an interested party may request the full Commission to review the Chairman's test year decision. North Port timely filed its petition to review the Chairman's test year decision on January 9, 1992.

After filing its original petition, North Port filed an Amended Petition To Review Chairman's Test Year Decision, wherein it added the request that the Commission review the Chairman's decision on approving the interim test year. In its response to North Port's petition, filed January 17, 1992, GDU asserts that the amended petition is untimely under Rule 25-30.430(1), Florida Administrative Code, as it was filed on the thirty-first day, January 10th. We disagree with GDU on this point. The Amended Petition was filed on January 9, 1992, as evidenced by the Division of Records and Reporting's date stamp. In any case, Rule 25-22.036(8), Florida Administrative Code, allows a petition to be amended as a matter of right "prior to the filing of a responsive pleading or the designation of a presiding officer" North Port amended its petition before either of these occurrences. Accordingly, it is the amended petition which we review herein.

In its petition, North Port asserts that during 1990 and 1991, GDU spent extraordinary sums of money to renovate the utility systems, to determine how its partially integrated system could be separated after a portion of it was transferred, and to advance its position in litigation with North Port and various other governmental entities. North Port further alleges that GDU may have made extraordinary and unwarranted transfers of funds to its parent corporation, General Development Corporation (GDC), which is currently in bankruptcy proceedings. In addition, since Charlotte County took approximately 80 percent of GDU's West Coast Division pursuant to a condemnation proceeding, North Port argues that 1990 and 1991 cannot constitute appropriate test years. North Port concludes that 1990 and 1991 are unrepresentative of GDU's operations and include extraordinary and non-recurring expenses unrelated to the normal operation of the utility.

In its Response, GDU argues that the Chairman's decision is appropriate for several reasons. GDU asserts that it did not spend extraordinary sums for the purposes North Port describes. Further, GDU asserts that it made pro forma adjustments for any extraordinary O&M expenses, and costs associated with litigation are booked in a separate account, not part of GDU's regulated expenses. As to the allegation of fund transfers, GDU states that it made no transfers of funds to its parent company during the test years other than normal management fees. GDU admits that in 1989 and 1990 it wrote-off a receivable from its parent; however, it claims that the write-off was accounted for below the line. GDU also states that its record keeping is structured so that it has kept track of assets transferred through condemnation and that its MFRs were prepared so as to reflect only the operations of the current West Coast Division.

The test year approval process has two basic purposes. First, it gives the Commission some advance notice that a utility will be filing a rate case. Second, it gives the Commission the opportunity for a preliminary review of what the utility intends to file.

By Rule 25-30.430(1), Florida Administrative Code, it is the Chairman who makes the preliminary review of the test year. As is clear from the information which a utility must include in its approval request, the Chairman's review is not intended to be detailed. Under the rule, a utility has to request approval of a test year prior to filing its rate case. However, nothing in Chapter 367, Florida Statutes, or the Commission's rules prohibits a utility from filing its rate case using a test year other than the one which the Chairman has approved or suggested.

In its petition, North Port requested the opportunity to obtain through discovery information relative to the test years and previous years. By virtue of Order No. 25666, issued January 31, 1992, granting intervention, North Port is a party to this proceeding. As a party, North Port is entitled to such discovery as is provided for under Commission rules. Therefore, this request for relief has, in effect, already been granted. North Port, as well as all other interested parties, will have the opportunity to explore its allegations and the appropriateness of the test years through discovery, testimony, and cross-examination during the hearing process.

North Port also requested an "opportunity to present to this Commission other, more appropriate year to designate as a Test Years [sic]." Again, as a party to the proceeding, North Port is afforded all of the rights a party has under Commission rules, including the right to raise all relevant issues and present all relevant information through the hearing process. This includes the right to raise the issue of what test year is appropriate. Therefore, this request has also been granted.

In addition, we note that at the Agenda Conference addressing this matter, Counsel for the City of North Port asserted that this Docket is proceeding in an accelerated fashion. As a point of clarification and as a matter of record, the scheduling of this case has not been accelerated.

As the Commission has noted in other decisions, the Commission's ultimate decision on the appropriateness of a test year is made at the conclusion of a rate case. See Order No. 25484, issued December 17, 1991, (United Telephone rate case) and Order No. 25292, issued November 4, 1991, (Florida Power Corp. rate case). In those Orders, the Commission determined that the Chairman's approval of a test year is a preliminary, interim decision subject to the Commission's final determination of the appropriateness of the test year at the conclusion of the rate proceeding.

In consideration of the above, we find it appropriate to uphold the Chairman's test year decision. Thus, the appropriate test years shall remain the historical twelve months ended December 30, 1990, for interim rates and a six month actual and a six month projected test year ended December 30, 1991, for final rates.

MOTION TO STRIKE

In its Motion to Strike filed on February 3, 1992, GDU argues that permissible pleadings should end with GDU's Response: "Whether [North Port's] initial pleading is characterized as a petition under Rule 25-22.036(4), or a motion under Rule 25-22.037(2), the Commission's rules contemplate only a single responsive pleading (*i.e.*, an answer under Rule 25-22.037(1) or a response under Rule 25-22.037(2)(b))." GDU, therefore, asks the Commission to strike North Port's Reply or, alternatively, give it leave to respond. GDU's response is incorporated in the Motion.

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We agree with GDU that the Commission's rules contemplate only a single responsive pleading. In this instance, we believe North Port's reply was not necessary under the circumstances and added nothing new to the original pleadings. Therefore, we find that GDU's Motion to Strike should be granted and North Port's reply should be struck.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that the City of North Port's Petition to Review Chairman's Test Year Decision is hereby granted. It is further

ORDERED that the Chairman's decision to approve the utility's proposed test years is hereby affirmed. It is further

ORDERED that General Development Utilities, Inc.'s Motion to Strike should be granted and the City of North Port's Reply shall be struck.

By ORDER of the Florida Public Service Commission this 13th day of April, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LAJ/CB/KAC

Dissent: Commissioner Luis J. Lauredo dissented.

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 25-22.038(2), 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.