

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Gulf Utility Company for interim and permanent increase in water rates, pursuant to Sections 367.0817, 367.082, and 367.0822, F.S., in Lee County.

DOCKET NO. 980057-WU
ORDER NO. PSC-98-0382-FOF-WU
ISSUED: March 10, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER DENYING INTERIM AND EMERGENCY/TEMPORARY RATES

BY THE COMMISSION:

Background

Gulf Utility Company (Gulf or utility) is a Class A utility which serves approximately 7,040 water and 2,435 wastewater customers in Lee County, Florida. The utility is located in a water use caution area as designated by the South Florida Water Management District (SFWMD).

By Order No. PSC-96-0501-FOF-WS, issued April 11, 1996, in Docket No. 960234-WS, we initiated an overearnings investigation and ordered the utility to hold \$353,492 in annual water revenues subject to refund. As noted by that order, the overearnings investigation would be combined at the appropriate time with a rate proceeding the utility had indicated that it would be filing for its wastewater system.

On June 27, 1996, Gulf filed an application for an increase in wastewater rates, approval of a decrease in water rates, and approval of service availability charges. The test year for final rates was the projected year ended December 31, 1996.

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FPSC-RECORDS/REPORTING

By Order No. PSC-97-0847-FOF-WS, issued July 15, 1997 (Final Order), in Dockets Nos. 960234-WS and 960329-WS, we approved final water and wastewater rates and charges for Gulf. On July 30, 1997, Gulf timely filed a motion for reconsideration of Order No. PSC-97-0847-FOF-WS. Gulf also filed a Motion to Release Escrow Funds on July 30, 1997. OPC filed a response to the Motion for Reconsideration on August 11, 1997, after our approval of an extension of time. On September 18, 1997, Gulf filed a Request for Administrative Notice for a letter provided by an engineering firm to support the in-service time frame for the one-million gallon reject holding tank.

By Order No. PSC-97-1544-FOF-WS (Reconsideration Order), issued December 9, 1997, we denied Gulf's Request for Administrative Notice. We also approved in part and denied in part the Motion for Reconsideration. The Reconsideration Order finalized the rate base, revenue requirement, rates and rate structure. The Reconsideration Order also approved releasing of the escrow account to Gulf.

On January 9, 1998, Gulf filed in the instant docket its Petition for an Interim and Permanent Water Rate Increase Pursuant to Sections 367.0817, 367.082 and 367.0822, Florida Statutes. In this limited proceeding, Gulf requests a return on its investment in water reuse facilities and recovery of additional salaries and chemical expense. In addition to its rate case expense for this proceeding, Gulf also seeks to recover the rate case expense it incurred in filing its motion for reconsideration in Dockets No. 960234-WS and 960329-WS. This Order consists of our findings with respect to Gulf's request for an interim increase in water rates, pursuant to Section 367.082, Florida Statutes.

Request for Interim Rates

As stated previously, Gulf filed this application pursuant to Sections 367.0817, 367.082 and 367.0822, Florida Statutes, for a limited proceeding to increase its water rates. In its filing, Gulf requests that we authorize an increase in its rates on an interim and permanent basis, which would provide for an annual increase in water revenues of \$222,403 (10.52%), based on the year ended November 30, 1997.

Pursuant to the Final Order in Dockets Nos. 960234-WS and 960329-WS, we declined to include the costs of the reject holding tank and monitoring and control system in Gulf's revenue

requirement. In its rate case, Gulf chose to file a projected test year ended December 31, 1996. We found that evidence in the record was not sufficient to support the utility's projection. Gulf did not produce firm evidence of its commitment to construct the holding tank, even though the hearing was held on March 4 and 5, 1997, three months after the end of the test year. Further, the utility did not have any bids for the tank's construction or a firm start/completion date for the project. Had there been at least a signed contract to construct the reject holding tank, we could have considered its inclusion in some manner. However, there was no date certain in the record as to when the tank would be built. Therefore, we concluded that the evidence did not support the inclusion of the one-million gallon reject water holding tank in rate base. We further noted that the utility could apply for a limited proceeding when it had firm figures and dates available, and if it could show financial need.

Pursuant to the Reconsideration Order, we denied the inclusion of additional salaries and chemical expense. That Order states that the utility failed to ask for relief in the rate case, and that a motion for reconsideration is an improper vehicle to request costs not requested, nor ever considered by the Commission in the record of the docket.

In its petition, Gulf states that the reject holding tank and monitoring and control system represents an investment of \$803,064. The tank was completed and placed in service on November 1, 1997, and is permitted by the Florida Department of Environmental Protection (DEP) as part of Gulf's reuse system pursuant to Section 403.064, Florida Statutes. Gulf states that the tank was constructed as a component part of the expansion of the Corkscrew water treatment plant and was necessary to obtain both the construction and operating permit for the expansion of the water treatment plant.

Gulf also states that it is seeking increased salary costs because DEP rules now require the staffing of the Corkscrew plant to be sixteen hours a day for seven days a week instead of six hours a day for five days a week. The increased staffing has apparently been required by DEP due to the expansion of the Corkscrew plant, whose DEP treatment plant classification has recently changed from a Class C to a Class B facility. Gulf further states that the increase in expense of chemicals is for the corrosion products fed at the Corkscrew and San Carlos Water Treatment facilities.

Finally, Gulf is seeking recovery of its rate case expense for both this proceeding and those incurred in filing its motion for reconsideration in Docket Nos. 960234-WS and 960329-WS. The expenses for the filing of the motion for reconsideration were incurred after the determination of rate case expense in those dockets.

A utility may receive "interim" rates pursuant to the interim statute set forth in Section 367.082, Florida Statutes. Although Section 367.082, Florida Statutes, contains very broad language regarding the availability of interim rates, it has been past Commission practice and policy not to use Section 367.082, Florida Statutes, in limited proceedings. See Order No. PSC-93-0525-FOF-WU, issued April 7, 1993 in Docket No. 910963-WU, In Re: Petition for a Limited Proceeding to Adjust Water Rates in Pasco County by Betmar Utilities, Inc.; and Order No. PSC-97-0825-WS, issued July 10, 1997 in Docket No. 970536-WS, In re: Application for limited proceeding increase in water and wastewater rates by Aloha Utilities, Inc. Gulf's petition was filed under the provisions of the limited proceeding statute, Section 367.0822, Florida Statutes, which does not include a provision for interim rates.

The purpose of the interim statute is to allow the utility an opportunity to earn a fair rate of return during the pendency of a full rate proceeding through higher interim rates subject to refund or to provide for refunds of excess earnings during the pendency of rate reduction cases. Thus, the granting of interim rates is a mechanism to address the regulatory lag which accompanies a full rate proceeding, which typically takes eight months. This may be distinguished from the instant case, in that limited proceedings are processed within a much shorter time, typically four to five months. Further, the limited proceeding statute was passed after the interim statute, and does not incorporate the interim concept. Therefore, we find that interim rates are not appropriate here. Accordingly, the utility's request for interim rates pursuant to Section 367.082, Florida Statutes, is denied.

However, we have in the past allowed emergency/temporary rates in limited proceedings. The determination of whether emergency/temporary rates are appropriate is made on a case-by-case basis. We have previously granted emergency/temporary rates for utilities where the utility has demonstrated an immediate or substantial increase in its costs or has demonstrated that a situation exists which requires our immediate attention in order to

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preserve the public health, safety, and welfare. See Order No. PSC-93-0525-FOF-WU, issued April 7, 1993 in Docket No. 910963-WU; Order No. PSC-97-0825-WS, issued July 10, 1997 in Docket No. 970536-WS; Order No. PSC-92-0127-FOF-SU, issued March 31, 1992 in Docket No. 911146-SU; and Order No. 25711, issued February 12, 1992 in Docket No. 911206-SU.

Gulf did not request emergency/temporary rates in its petition. Even if the utility had made such a request, we find that Gulf's petition fails to demonstrate the kinds of exigent circumstances which would warrant the granting of emergency/temporary rates. The utility has not demonstrated an immediate need for an increase in costs occasioned by the water reuse facilities. Further, the utility could have supported its request for the inclusion of costs for the reject tank and could have requested recovery of the additional salaries and chemical cost in the rate case. Limited proceedings are typically processed within four to five months, and Gulf's petition does not appear to contain any allegations which would warrant the recovery of its reuse facility costs prior to the time normally required to process a limited proceeding. Finally, the utility has not presented in its filing a situation which requires our immediate attention in order to preserve the public health, safety, and welfare. Therefore, emergency/temporary rates are not appropriate in this case, either.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Gulf Utility Company's request for interim rates is hereby denied. It is further

ORDERED that emergency/temporary rates are not appropriate in this case.

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By ORDER of the Florida Public Service Commission this 10th
day of March, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

JSB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 intermediate in nature, 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 wastewater utility. Citizens of the State of Florida v. Mayo, 316 So.2d 262 (Fla. 1975), states that an order on interim rates is not final nor reviewable until a final order is issued. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.