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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a rate increase)
in Pasco County by UTILITIES, INC. OF)
FLORIDA)
_____)

DOCKET NO. 910020-WS
ORDER NO. 25604
ISSUED: 1/16/92

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
BETTY EASLEY

ORDER DENYING CITIZEN'S MOTION TO DISMISS

BY THE COMMISSION:

On August 26, 1991, Utilities, Inc. of Florida (the utility) filed a Request for Reduction of the Revenue Requirement in this pending rate case docket. The Office of Public Counsel (OPC) filed a Motion to Dismiss the case based on the filing of the request for a reduction in the revenue request. The request was subsequently withdrawn. On September 13, 1991, OPC filed a Motion to Dismiss, Taking into Account Utility's Notice of Withdrawal. OPC also requested Oral Argument on the motions and leave to file a reply to the Utility's response to the motion to dismiss. A hearing on OPC's Motion to Dismiss was held on October 9, 1991, in Tallahassee, Florida.

The basis for the utility's request for reduction of the revenue requirement was that based on actual flow data, the utility had overestimated the revenue requirement for the wastewater system. This occurred because there was no actual or historical flow data from the interconnection of the utility with the Pasco County Regional Wastewater Treatment system when the minimum filing requirements (MFRs) were filed. Once three months of data was obtained and the utility determined that it had significantly overstated flow estimates, the company filed its request for reduction of the revenue requirement.

At the Motion Hearing, the utility stated that since the filing of its initial request for revenue reduction, OPC has conducted depositions in which the subject of the wastewater flows was covered, that Staff has outstanding interrogatories on this matter, that discovery is still available and that therefore OPC has shown no harm or prejudice.

It is OPC's position that the admission by the utility that the flow estimates were significantly overestimated represents an

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admission that the MFRs, as filed, were incorrect and that the error was such that the rate case should be dismissed. OPC also argues that the revelation of these facts so late in the proceedings, deprives them of due process because there remains insufficient time for discovery, to rework their trial preparation, and to be adequately prepared for hearing. OPC also urges that their position is supported by our decisions in the Application of Sailfish Point Utility Corporation for a rate increase in Order No. 23123, issued June 26, 1990, and in the Application of General Development Utilities, Inc. (GDU), Order No. 18335, issued October 22, 1987.

We find that the Sailfish Point case does not apply here because the facts in the Sailfish Point case were different than those in this instance. We would also distinguish the facts of this case from the GDU case in which we continued the proceeding until the utility reconciled its MFRs with its prefiled testimony.

In this case, the utility has asked for a decrease in revenue requirement, discovery is still pending, and the data the utility relied on for the decrease in the revenue request was unavailable at the time of filing of the MFRs. We have not dismissed a rate case solely on the basis of a utility requesting to adjust its rates downward.

Upon consideration, we find that OPC has failed to make a showing of prejudice by the utility's disclosure of information. We further find that OPC has failed to show any due process violation because: discovery is still open; the new, actual flow data is available; and since the interconnection had not taken place at the time of filing of the MFRs, there was no accurate data on the actual flows at the time of filing the MFRs.

Therefore, based on the foregoing, the Motion to Dismiss is hereby denied with the caveat that to the extent that the utility has information concerning the calculation of the change in revenue requirements, the utility is to do everything it can to cooperate with Public Counsel in providing that information prior to hearing, even if it must be provided in an abbreviated time schedule.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Office of Public Counsel's Motion to Dismiss, Taking into Account Utilities, Inc. of Florida's Notice of Withdrawal, is hereby denied.

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By ORDER of the Florida Public Service Commission, this 16th
day of JANUARY, 1992.



STEVE TRIBBIE, Director
Division of Records and Reporting

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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: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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.