BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of rate of SUNSHINE UTILITIES in Marion County for possible overearnings	DOCKET NO. 881030-WU ORDER NO. 25644 ISSUED: 1/27/92

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
BETTY EASLEY

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

By Order No. 22969, issued May 23, 1990, this Commission found that for the test year ended December 31, 1987, Sunshine Utilities of Central Florida, Inc., (Sunshine or utility) had overearned. Because of the staleness of the test year data, we did not reduce the utility's rates. However, we ordered Sunshine to refund with interest 7.68% of its revenues for service rendered from August 30, 1988, through September 18, 1989, and 9.79% of its revenues for service rendered from September 19, 1989, to December 31, 1989, to customers of record as of December 31, 1989.

After we denied Sunshine's motion for reconsideration of Order No. 22969, Sunshine appealed our decision to the First District Court of Appeal (DCA). By Order No. 23898, issued December 19, 1990, the Commission stayed the required refund pending resolution of the appeal. The DCA upheld Order No. 22969. See Sunshine Utilities v. Florida Public Service Commission, 577 So.2d 663 (Fla. 1st DCA 1991). After the DCA denied Sunshine's Motion For Rehearing, Sunshine filed a notice to invoke the discretionary jurisdiction of the Florida Supreme Court. By opinion filed October 2, 1991, the Florida Supreme Court declined to accept jurisdiction over the case and stated that it would not entertain a motion for rehearing.

By Order No. 25394, issued November 25, 1991, we lifted our stay of the refund because the appeal process was over for Sunshine. On December 9, 1991, Sunshine filed a Motion for Reconsideration of Order No. 25394.

In its motion, Sunshine asserts that the Commission concluded Sunshine overearned as a result of a reduction to rate base with the imputation of contributions-in-aid-of-construction (CIAC). Sunshine argues that in its current rate case, Docket No. 900386-WU, it produced evidence which showed that the Commission's

imputation of CIAC was erroneous, and, therefore, it would be inappropriate to have Sunshine refund revenues as previously ordered.

We find that Sunshine's motion is without merit for several reasons. First of all, we do not believe that one can definitively say that the Commission found that Sunshine overearned because of the imputation of CIAC. The imputation of CIAC was just one of several adjustments made by the Commission in the overearnings case.

In addition, we do not believe that Sunshine has met the standard for reconsideration. Generally, "[t]he purpose of a Petition for Reconsideration is merely to bring to the attention . . . of the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. It is not intended as a procedure for re-arguing . . . because the losing party disagrees with the judgement or order." Diamond Cab Company of Miami v. King, 146 So.2d 889, 891 (Fla. 1962) (citations omitted). The standard for judging the motion filed in this case, then, should be whether or not the Commission made a mistake or an oversight in lifting the stay. Sunshine identifies no mistake or oversight that the Commission has made in lifting the stay--it simply attempts to reargue the merits of the refund.

Finally, Sunshine's motion is without merit for an even more critical reason. The Order for which Sunshine ostensibly seeks reconsideration lifted the stay of the refund, it did not set the refund. By its own terms, Sunshine's motion asks reconsideration of the refund itself. Sunshine would have the Commission reverse its decision requiring a refund in the overearnings case--a decision which has been upheld after complete judicial review--based on evidence in the record in another case, the rate case. Sunshine's reasoning is fundamentally flawed. This Commission makes decisions based solely upon evidence in the record for each particular case. Evidence in the record for the subsequent rate case has no bearing whatsoever on the decision made based on the record evidence in the overearnings case.

In consideration of the foregoing, we hereby deny Sunshine's motion for reconsideration.

Pursuant to Order No. 25394, this docket shall be closed upon verification that the refund required by Order No. 22969 has been completed.

It is therefore,

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration filed by Sunshine Utilities of Central Florida, Inc., is hereby denied.

By ORDER of the Florida Public Service Commission, this 27th day of JANUARY, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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 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.