

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 910020-WS
ORDER NO. 25817
ISSUED: 2/27/92

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
BETTY EASLEY

ORDER DENYING EMERGENCY MOTION TO REOPEN DISCOVERY AND RECORD

BY THE COMMISSION:

On December 6, 1991, Utilities, Inc. of Florida (utility) filed its Emergency Motion To Reopen Discovery And Record To Allow For Production Of Testimony And Exhibits Addressing Issues Raised For The First Time At Hearing. The utility also requested oral argument on the motion. In its motion, the utility asserts that at hearing, two issues were raised for the first time. The utility further argues that issues raised for the first time at the hearing should be considered waived, and if they are not waived, the utility should be able to reopen the record to address those issues. According to the utility, the first of the two issues is whether the utility's use of the Commission's Staff's audit in Docket No. 890914-WS as a starting point for its rate base determination was reasonable and appropriate. The second issue is what tax treatment of utility plant was utilized by the prior owners.

In their response, the Office of Public Counsel (OPC) characterized the questions raised at hearing as fundamental questions going to the utility's burden of proof in these proceedings. OPC argued that the requirements of Rule 25-22.039(5)(b)2., Florida Administrative Code, and the Prehearing Order do not require a party to specifically enumerate the fundamental issue of the utility's meeting its burden of proof. Further, OPC argued that the issue of the sufficiency of the evidence supporting the utility's MFRs is such an issue.

On January 13, 1992, a hearing on the motion was held in Tallahassee. After hearing the arguments of the parties, a bench decision was made denying the utility's motion based on our following findings and conclusions: 1) that the question of the

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sufficiency and admissibility of the Staff audit was previously raised and ruled on at the hearing; and 2) that Rule 25-22.039(5)(b)2., Florida Administrative Code, does not require the level of specificity in enumerating issues that the utility would have us apply.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Emergency Motion To Reopen Discovery And Record To Allow For Production Of Testimony And Exhibits Addressing Issues Raised For The First Time At Hearing filed by Utilities, Inc. of Florida is hereby denied.

By ORDER of the Florida Public Service Commission, this 27th
day of FEBRUARY, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

CB

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

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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.