

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate) DOCKET NO. 911030-WS
increase in Brevard County by)
GENERAL DEVELOPMENT UTILITIES,)
INC. (Port Malabar Division))
_____)

In re: Application for a rate) DOCKET NO. 911067-WS
increase by GENERAL DEVELOPMENT)
UTILITIES, INC. in Charlotte,) ORDER NO. PSC-92-0090-PCO-WS
DeSoto and Sarasota Counties)
_____) ISSUED: 3/23/92

ORDER DENYING MOTIONS FOR CONTINUANCE AND ORAL ARGUMENT

I. MOTION FOR CONTINUANCE

On February 19, 1992, the City of Palm Bay and the City of North Port, Intervenor in the above-referenced dockets, filed a Motion for Continuance seeking the continuance of the following pending matters: 1) interim increase in rates for General Development Utilities, Inc.'s West Coast and Port Malabar systems (GDU); 2) the prehearing scheduled for May 6, 1992; and 3) the hearing on GDU's application for a rate increase scheduled for May 20, 21, and 22, 1992. As grounds for their Motion for Continuance, the Intervenor state that: 1) arbitration proceedings for the sale of the systems to the Intervenor are pending; 2) there are significant issues raised by GDU's application; 3) the consolidation of the dockets for hearing will require additional time for preparation; 4) GDU's only purpose in this proceeding is to inflate the purchase price; 5) other potential parties need to be allowed time to intervene and other intervenors need more time to prepare; and 6) allowing this case to go forward will cause the Commission to be used for a purpose never intended.

In its Response in Opposition to the Motion for Continuance, filed on March 2, 1992, GDU states as follows: 1) the pending arbitration is not relevant to this proceeding; 2) the Intervenor have asserted that they have no obligation to purchase the systems after arbitration, and no specific date has been set for sale after arbitration; 3) there is no statutory authority for the Commission to continue interim rates; 4) the existence of the issues identified by the Intervenor is not a justifiable basis for a continuance; 5) the consolidation of the cases for hearing will cause less time to be required for preparation; 6) Intervenor's request, if granted, would delay final action beyond the eight-

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month period, which will end September 16, 1992; 7) pursuant to Commission rules the Intervenor take the case as they find it; and 8) GDU's decision to seek a rate increase was based on the fact that the systems were underearning.

Section 367.082, Florida Statutes, requires this Commission to authorize interim rates, subject to refund, to a utility which has demonstrated that it is earning below its minimum rate of return. As is clear from the following language of that statute, the granting of interim rates by the Commission is not a discretionary act:

(2)(a) In a proceeding for an interim increase in rates, the commission shall authorize, within 60 days of the filing for such relief, the collection of rates sufficient to earn the minimum of the range of rate of return calculated in accordance with subparagraph (5)(b)2. The difference between the interim rates and the previously authorized rates shall be collected under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission. (emphasis added)

The granting of interim rates is a mandatory, preliminary act; it does not constitute a final ruling on any issue in this pending rate case. Further, any amount of interim rates collected which may be deemed to have been inappropriate or which exceeds the Commission-approved final rates, must be refunded to the ratepayers. Accordingly, we find it appropriate to deny that portion of the Intervenor's motion requesting continuance of this Commission's decision on interim rates.

As to the issue of pending arbitration raised by the Intervenor, we find that the pending arbitration is not good cause for continuing the proceedings in this case. First, we find that pending arbitration does not obviate the need for a rate increase or decrease. Further, we find Intervenor's argument that the rate case proceedings should be continued because arbitration hearings will be held the week following the Commission rate case hearing, to be unpersuasive. There has been no assertion by the Intervenor that once arbitration is complete, there will be an immediate sale of the systems to the Intervenor. We also note that, in GDU's response, the statement was made that in the arbitration

proceeding, it is Intervenors' position that there will be no obligation to purchase the systems once a purchase price has been established through arbitration. Further, although the rate case hearing has been scheduled within five days of arbitration, the Commission will not make a final decision on the rates until approximately three months after the full evidentiary hearing. Section 367.082(7), Florida Statutes, provides that, if a utility becomes exempt from Commission regulation or jurisdiction during the pendency of a rate case, the request for rate relief pending before the Commission is deemed to have been withdrawn. The statute further provides that at such time, interim rates must be discontinued, and money collected pursuant to the interim rate relief must be refunded with interest. Thus, if the systems are purchased prior to the Commission's final decision setting rates, the ratepayers will not bear the burden of the rate case expense associated with this hearing. Based on the above, we find that there will be no harm to the ratepayers if this proceeding is not continued.

The Intervenors raise several issues on matters, such as the appropriate value of plant-in-service, the percentage of used and useful plant, and the treatment of contributions-in-aid-of-construction (CIAC), which Intervenors assert are so substantial that additional time is necessary to complete discovery. We find these issues to be appropriate for resolution through the rate proceedings. In addition, we find that the Intervenors have failed to identify issues of such magnitude as to require a continuance of these proceedings.

Another ground for continuance raised by the Intervenors is the need to allow additional time for potential parties to intervene and to allow those intervenors adequate time to prepare. We are required to follow the provisions of Rule 25-22.039, Florida Administrative Code, which states that, "Intervenors take the case as they find it." Further, we cannot hold proceedings in abeyance while "potential parties" determine whether or when they will intervene. Thus, we find that this ground is inappropriate as a basis for continuance.

Intervenors state in their motion that GDU's purpose in applying for rate relief is to inflate the purchase price of the utility systems. As a utility regulated by this Commission, GDU has a legal right to file for rate relief, regardless of any pending arbitration. The Commission has a statutory obligation to

fix rates pursuant to the requirements set forth in Chapter 367, Florida Statutes. Further, as Intervenors should be aware, by operation of Section 367.081(6), Florida Statutes, the utility has the right to put its requested rates into effect eight months from the official date of filing if this Commission does not rule on its rate request within that time frame. We find that the delay requested by the Intervenors would more than likely extend the final decision on rates beyond the eight-month period.

In consideration of the foregoing, we find that the Intervenors have not established good cause for continuing the decision on interim rates, the prehearing, or the hearing. Accordingly, the Motion for Continuance filed by Intervenors is denied.

II. MOTION FOR ORAL ARGUMENT

On March 9, 1992, Intervenors filed a Motion for Oral Argument on their Motion for Continuance. Intervenors argue that the questions raised by GDU's request for rate relief on the eve of arbitration are a matter of great importance which should be heard by the full Commission. As further grounds for their motion the Intervenors allege as follows: 1) GDU's motives in seeking rate relief are questionable; 2) GDU should not be heard to argue that the purchase of the systems is speculative because it is GDU's fault that this matter has not been previously resolved; 3) the proposed interim rate increases will adversely affect the public; and 4) there are questions as to the appropriateness of any rate increase based on information filed in GDU's application.

By response filed March 17, 1992, GDU argues that the Motion is untimely and fails to state how oral argument will aid the Commission in understanding the positions of the parties. GDU further argues that Paragraphs 5 through 8 of the Motion for Oral Argument seek to introduce new allegations that are not relevant to the question of granting oral argument and requests that these paragraphs be stricken or that GDU be allowed to respond.

Rule 25-22.058, Florida Administrative Code, provides, in pertinent part:

A request for oral argument shall be contained on a separate document and must accompany the pleading upon

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which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues raised by exceptions or responses. Failure to file a timely request for oral argument shall constitute waiver thereof.

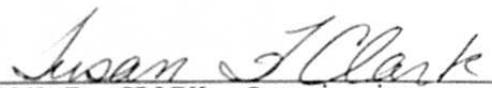
Intervenors' Motion for Oral Argument was filed on March 9, 1992, nineteen days after the filing of the Motion for Continuance. Thus, the Motion for Oral Argument failed to meet the requirements of Rule 25-22.058, Florida Administrative Code. Accordingly, we find it appropriate to deny Intervenors' Motion for Oral Argument as untimely.

Based on the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the Motion for Continuance filed by the City of Palm Bay and the City of North Port is hereby denied. It is further

ORDERED that the Motion for Oral Argument is denied.

By ORDER of the Florida Public Service Commission, this 23rd day of MARCH, 1992.



SUSAN F. CLARK, Commissioner
as Prehearing Officer

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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

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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.