

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) ORDER NO. PSC-92-0361-FOF-WS
UTILITIES, INC. in Charlotte,) ISSUED: 05/14/92
DeSoto and Sarasota Counties)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER DENYING RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

On January 3, 1992, General Development Utilities, Inc. (GDU), filed applications for rate increases for its Port Malabar and West Coast Divisions. The City of Palm Bay's request to intervene was granted by Order No. 25655, issued January 29, 1992, and the City of North Port's request to intervene was granted by Order No. 25666, issued January 31, 1992. By Order No. 25684, issued February 4, 1992, the two rate cases were consolidated for purposes of hearing. Thereafter, the Order on Procedure, Order No. 25752, issued February 19, 1992, set forth the controlling dates for the hearing. By Motion filed on February 19, 1992, Intervenor, the Cities of North Port and Palm Bay, asked for the rate cases to be continued until pending arbitration proceedings were completed.

By Order No. PSC-92-0090-PCO-WS, issued March 23, 1992, the Prehearing Officer denied the Cities' Motion for Continuance and Oral Argument holding that the Cities had not established good cause for continuing the decision on interim rates, the prehearing or the hearing. Further, the Order determined that the pending arbitration does not obviate the need for a rate increase or decrease, that there has been no assertion that the Cities will be obligated to purchase the utility systems once arbitration is completed, and that pursuant to Section 367.082(7), Florida

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Statutes, the ratepayers will not bear the burden of rate case expense associated with this proceeding if the systems are in fact purchased prior to a final rate determination by this Commission.

In their Motion for Reconsideration, filed on March 24, 1992, the Cities of Palm Bay and North Port alleged that the Commission has failed to "fully appreciate the way in which this Commission is being used by GDU...."; that the Commission's failing to continue the rate cases rewards GDU for its delaying actions in the arbitration proceedings and is wasting taxpayers' money and the Commission's time; that the Cities are prepared to "accept the risk" that the requested rates may go into effect if the continuance causes the Commission to rule on GDU's rate request beyond the running of the eight month clock; that the ratepayers will bear the costs of the rate case proceedings because in the arbitration proceedings, the utility has requested compensation for rate case expense; that they should be given every opportunity to explore the issues of the rate case, including the completion of discovery in the arbitration cases which will shed "substantial additional light" on the issues raised in the rate case; and that the timing of GDU's request for rate relief is unprecedented and suspect.

GDU timely filed a response to the Motion for Reconsideration on March 31, 1992. GDU alleged that the Motion should be denied because it does nothing more than reargue matters contained in the Motion for Continuance. Further, GDU argued that many of the arguments raised by the Cities were made orally before this Commission at the March 24th Agenda. GDU also argued that it is not the Cities' "risk" to accept or reject the rates going into effect when the eight month clock runs; it is the general body of ratepayers who would be impacted, not just the Cities.

The legal standard to be applied in evaluating a motion for reconsideration is set forth in Diamond Cab Co. of Miami v. King, 146 So.2d 889 at 891:

The purpose of a petition for rehearing 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 the whole case merely because the losing party disagrees with the judgment or order.

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We find that the Cities have not raised any issue which the Prehearing Officer failed to consider or which was overlooked in the Order Denying Motions for Continuance and Oral Argument. The Cities' Motion for Consideration is hereby denied.

Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration filed by the Cities of North Port and Palm Bay is hereby denied.

By ORDER of the Florida Public Service Commission, this 14th day of May, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

by: Kay Ferguson
Chief, Bureau of Records

CB/LAJ/KAC

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.

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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.