

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate)
increase by GENERAL DEVELOPMENT)
UTILITIES, INC. (Port Malabar)
Division) in Brevard County)
_____)

DOCKET NO. 911030-WS

In re: Application for a rate)
increase by GENERAL DEVELOPMENT)
UTILITIES, INC. in Charlotte,)
DeSoto and Sarasota Counties)
_____)

DOCKET NO. 911067-WS
ORDER NO. PSC-92-0774-PCO-WS
ISSUED: 8/7/92

ORDER RESCHEDULING HEARING

On July 2, 1992, the Cities of Palm Bay and North Port (Cities) filed a Motion to Defer Rescheduling the Consolidated Rate Cases. As grounds for their motion the Cities state that the PSC has no jurisdiction over the North Port facilities based on the automatic stay in effect by operation of rule when the First District Court of Appeal issued the Order to Show Cause why the Cities' Petition for Writ of Prohibition should not be granted, and therefore, it would be "inappropriate for the PSC to reschedule the consolidated rate cases for final hearing." Further, the Cities state that both the City of Palm Bay and the City of North Port expect to complete their acquisitions on or about October 1, 1992.

On July 2, 1992, the Office of Public Counsel (OPC) filed a response in support of the Cities' motion stating that the sale of the two systems is, "even more imminent today" than when the hearing was previously postponed and that General Development Utilities, Inc. (GDU or the utility) is, "doing everything in its power to frustrate and delay the purchases at the price established by the arbitration panels." OPC further states that GDU would not be prejudiced by the delay because GDU would be able to place its requested rates into effect after the eight month deadline is reached.

GDU filed its response on July 9, 1992. In its response GDU states that it is unclear in the Cities' Motion whether the request of the Cities is to defer the act of setting new hearing dates until after September 1, 1992, or to set new hearing dates after September 1, 1992. GDU states that it does not object to the selecting of dates for hearing after September 1, 1992. GDU also states that it is unclear as to whether or when the Cities will acquire the respective utility systems due to the uncertainty regarding the future course of judicial proceedings.

DOCUMENT NUMBER-DATE

08820 AUG -7 1992

FILED RECORDS (RECORDS)

The Commission has the authority to reschedule the hearing date and to rule on the pending motion because the rescheduling of the hearing is a ministerial act. Further, by the filing of their motion, the Cities have requested the Commission to assert its authority to rule on the rescheduling of the hearing.

The argument of the Cities to continue the rescheduling of these proceedings until after September 1, 1992, is not persuasive. Previously, in reliance on assurances that the acquisitions would be completed by July 4, 1992, these proceedings were continued. Although there has been a favorable referendum in North Port on July 28, and although the City Commission in Palm Bay has voted to acquire the Port Malabar system, there remains no finality to the arbitration proceedings and the acquisition of the systems by the Cities. If an appeal is filed in either case, the finality of the acquisition and transfer of these systems to the Cities may be more than a year away. These rate proceedings cannot be continued indefinitely, and shall be rescheduled in a manner which allows this Commission to meet its statutory responsibility pursuant to Section 367.081, Florida Statutes, to make a final decision on rates by January 16, 1993. The Commission calendar can accommodate a hearing on September 8-11, 1992, which will allow for a final decision in this rate case prior to the running of the 12-month clock.

Based on the foregoing, the final, consolidated hearing in Dockets Nos. 911067-WS and 911030-WS is rescheduled for September 8-11, 1992, in Tallahassee. If the First District Court of Appeal has not rendered a decision on the Cities' Petition for Writ of Prohibition concerning Docket No. 911067-WS (West Coast Division, North Port) by August 24, 1992, the dockets shall be severed and the final hearing in Docket No. 911030-WS (the Port Malabar Division) shall be held on the above noted dates. If the dockets are severed for hearing, the hearing on Docket No. 911030-WS shall be held in Tallahassee for the following reasons: 1) this part of the hearing was previously noticed for Tallahassee; 2) the service hearing has already been held in the service area; 3) witnesses, counsel, and staff will be able to make plans to be in Tallahassee regardless of the status of the stay in Docket No. 911067-WS; 4) the utility will be able to notice the customers in a timely fashion, and in accordance with applicable statutes and rules. Pending discovery matters shall be scheduled as previously set forth in Order No. PSC-92-0432-PCO-WS, issued June 1, 1992.

Further, at least seven days and not more than twenty days prior to the hearing, the utility shall have published in a newspaper of general circulation in the service areas a display

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advertisement stating the date, time, location and purpose of the hearing. In addition, the utility shall give written notice of the date, time, location and purpose of the hearing to each of its customers no less than fourteen days prior to the first day of the hearing. Notices for Docket No. 911067-WS shall explain that because the Commission is stayed from exercising jurisdiction until the First District Court of Appeal determines whether the PSC has jurisdiction to set rates for this system, the hearing for the West Coast Division may be cancelled without further notice. Both notices shall be approved by the Commission or its staff prior to distribution.

Based on the foregoing, it is therefore,

ORDERED by Susan F. Clark, as Prehearing Officer, that the Cities of Palm Bay and North Port's Motion to Defer Rescheduling the Consolidated Rate Cases is hereby denied to the extent that the rescheduling of the hearing is not deferred until after September 1, 1992. It is further

ORDERED that the final hearing in Dockets Nos. 911030-WS and 911067-WS is hereby rescheduled for September 8-11, 1992. It is further

ORDERED that General Development Utilities, Inc. shall provide notice of the hearing as set forth in the body of this Order. It is further

ORDERED that the provisions of Order No. PSC-92-0432-PCO-WS shall govern pending discovery matters, unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 7th day of AUGUST, 1992.



SUSAN F. CLARK, Commissioner
and Prehearing Officer

(S E A L)

SFC/CB

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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 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.