

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate)	DOCKET NO. 900521-WS
increase in Lee County by FFEC-Six,)	ORDER NO. 24406
Ltd. (formerly known as FFEC-Six, Inc.)))	ISSUED: 4-22-91
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 BETTY EASLEY
 GERALD L. GUNTER
 MICHAEL MCK. WILSON

ORDER DENYING MOTION FOR
 RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

FFEC-Six, Inc. (FFEC-Six or utility) is a Class B water and wastewater utility, serving approximately 1,297 water customers and 1,258 wastewater customers in Lee County. On December 3, 1990, the utility filed an application for increased water and wastewater rates. The information satisfied the minimum filing requirements (MFRs) and that date was established as the official date of filing. The utility also requested an interim increase in rates.

On February 18, 1991, by Order No. 24128, the Commission suspended the utility's proposed rate schedules and granted interim rates subject to refund. On March 4, 1991, a Motion for Reconsideration was filed by James L. Carr, on behalf of Dorothy A. Carr, a customer.

Mr. Carr is not a customer of record of the utility, nor is he an attorney licensed to practice law in Florida. His standing to bring this motion is questionable, but we will address this motion in an abundance of caution. If a hearing ensues in this rate case, which is being processed as a proposed agency action, and Mr. Carr wishes to represent a customer, he would have to obtain status as a Class B practitioner.

The utility was not served with a copy of this motion. Upon learning of that on March 8, 1991, our staff supplied the utility

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with a copy on that date. Accordingly, the response time should run from March 8 rather than from March 4. The utility filed a timely response in opposition on March 14, 1991.

FFEC-Six, Inc. has been restructured into a limited partnership called FFEC-Six, Ltd and that restructuring has been recognized in Order No. 24240 issued March 14, 1991. However for purposes of this order, the utility will be referred to as FFEC-Six (or utility).

MOTION

The motion seeks reconsideration of Order No. 24128, which is an interim order. Interim decisions are generally not reconsidered because they are non-final in nature; any rate increase is subject to refund so that the customers are protected; interim decisions are by definition "quick and dirty" reviews made upon the utility's prima facie showing of entitlement pursuant to the interim statute; and they are subject to change based upon completion of the Commission's investigation of the filing, which is then reduced to writing in the form of an order.

Historically, courts have declined review of interlocutory orders, except where such order is definitive in impact and where judicial abstention would result in a party's irreparable injury. That is not the case here. However, this motion raises a jurisdictional question. We address that question and the other factual ones raised below.

The motion alleges that the utility is not the real party in interest and thus the petition for rate relief was wrongfully filed (Paragraph 2). In Paragraph 3, the motion states that the public records do not substantiate that FFEC-Six furnishes water and wastewater to the Lake Fairways and Pine Lakes "tenants," or that Lake Fairways or Pine Lakes are regulated utilities.

FFEC-Six was issued water and wastewater certificates in 1983 to serve the Lake Fairways mobile home park. The certificate was amended in 1986 to include the Pine Lakes mobile home park (Each are now referred to as "country club" and not "mobile home park"). The utility identifies its two systems as Pine Lake Country Club and Lake Fairways Country Club. Its bill from Lee County (it purchases water from Lee County only for the Pine Lakes system) reads: Pine Lake Country Club, c/o FFEC-Six. This nomenclature

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may be the source of the confusion. However, FFEC-Six pays Lee County for the water and owns the wells that provide water for the Lake Fairways system. In its response to the motion, the utility states that all facts and the Commission audit show conclusively that the utility is the service provider. Pine Lakes Country Club has never purchased or paid for water from Lee County.

Upon consideration, we believe that FFEC-Six is the proper party to bring this rate case before the Commission. The regulated utility is the certificated entity, FFEC-Six, and not the "park owners."

In reference to Paragraph 3 of the motion, FFEC-Six has two plants; one is the Lake Fairways water treatment plant and the other is the Lake Fairways wastewater treatment plant. The water system provides water to Lake Fairways Country Club and the wastewater system provides treatment to Lake Fairways Country Club and Pine Lakes Country Club. FFEC-Six purchases bulk treated water from Lee County to supply Pine Lakes Country Club residents. The bill from Lee County is addressed to Pine Lakes Country Club, in care of FFEC-Six. The office of FFEC-Six is located in the clubhouse of Pine Lakes Country Club. FFEC-Six has been purchasing Lee County water from June 1987 to present. Lee County used to charge FFEC-Six a base charge flat rate of \$354.94 per month. This charge is now based on the total number of units at Pine Lakes Country Club at build-out, 867 units, at \$1.41 per unit.

Regarding the 7,592,000 gallons of water Lee County billed FFEC-Six for in February of 1991 as stated in Paragraph 3 of the motion, we have learned that an error was made in calculating the bill. Due to a meter turning over, the wrong amount of water used was entered into the computer. FFEC-Six should have been billed for 2,692,000 gallons of water for the month of February. This fact does not affect the interim rate level which we approved in Order No. 24128. In addition, the two service areas are not interconnected; only the customers at Pine Lakes Country Club receive water from Lee County. The 149,000 gallons pumped at the Lake Fairways water treatment plant on February 14, 1991, was able to provide the 867 customers at Lake Fairways with an average of 172 gallons per day. On average, the customers of Lake Fairways Country Club use 137 gallons per day. Therefore, the 172 gallons provided by Lake Fairways water treatment plant was more than sufficient.

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Regarding the allegation that the public records do not substantiate that FFEC-Six provides water and wastewater services to the tenants of Lake Fairways and Pine Lakes as stated in Paragraph 3 of the motion, the Florida Department of Environmental Regulation recognizes FFEC-Six, Inc. as the Permittee for the permits FFEC-Six holds with them. Also, as previously stated, Certificates Nos. 353-W and 309-S with the Florida Public Service Commission recognize FFEC-Six as the utility having the authority to provide water and wastewater service. See Order No. 11606, February 11, 1983.

In Paragraph 4 of the motion, Mr. Carr alleges that the public records do not support the utility's reported \$2,890,945 for plant-in-service. The actual average plant-in-service reported by the utility for December 31, 1991 is \$4,680,788. In its response, the utility states that Ms. Carr relies only on partial information in reaching her conclusion and that the MFRs and utility records properly reflect and support the plant additions identified in Schedule A-4 of the MFRs.

We have reviewed the utility's books and records. We have compared invoices and cancelled checks against the entries recording plant-in-service. While we may have found several minor errors in the recording of certain items, we believe that the utility has substantially supported its reported level of plant-in-service. We will address the minor errors in the proposed agency action order issued at the end of our investigation.

The public records which Mr. Carr refers to are from the ad valorem and non-ad valorem tax assessments. Our staff has talked with the Lee County Property Appraiser's office. FFEC-Six is not shown on the tangible property tax rolls. It is taxed solely on the real estate tax roll. The utility property is valued through a type of income approach and not a cost-based approach. Therefore, the assessed value for FFEC-Six will not compare to the original cost records used to determine plant-in-service shown in the rate case.

In Paragraph 5, the motion asserts that the park owners, who "produce and sell" water and wastewater to the customers are the real parties at interest and thus are regulated by Chapter 723, the Florida Mobile Home Act, and not by Chapter 367. The utility, in its response, states this conclusion is incorrect.

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We believe that the facts show that the "park owners" are not providing water and wastewater utility service. The utility services are provided by FFEC-Six, a legal entity formed to provide water and wastewater service to the developments. That was clearly stated in the certification order. Such entity is subject to the exclusive jurisdiction of the Public Service Commission pursuant to Chapter 367, Florida Statutes.

Upon consideration of the foregoing, we find that the motion should be denied. This Commission has jurisdiction over FFEC-Six, the entity providing water and wastewater service. The motion does not show any error in fact or law in the Commission's interim decision.

The Commission has not concluded its review and analysis of the utility's rate filing. Order No. 24128 is non-final. Since it is an interim order, the interim rate increase is subject to refund, pending the Commission's final decision in this case, so all parties are protected.

It is therefore,

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration of Order No. 24128, filed by James L. Carr on behalf of Dorothy A. Carr, is hereby denied.

By ORDER of the Florida Public Service Commission, this 22nd day of APRIL, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

NSD

by: Kay Flynn
Chief, Bureau of Records

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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: 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. 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.