BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re Application of GULF UTILITY COMPANY for an increase in Wastewater Rates, approval of a decrease in Water Rates and approval of service availability charges in Lee County, Florida	)	Docket No 960329-WS
In re Application for increase in rates and service availability charges in Lee County by Gulf Utility Company	)	Docket No 960234-WS
	)	Filed August 11, 1997

CITIZENS RESPONSE TO MOTION FOR RECONSIDERATION

The Citizens of the State of Florida, ("Citizens,") by and through their undersigned attorney, file this response to Gulf Utility Company's ("Gulf, utility or company") Motion for Reconsideration of Commission Order No. PSC-97-0847-FOF-WS, entered July 15, 1997, and state

GENERAL COMMENT

1 The purpose of a motion for reconsideration is to merely bring to the attention of the trial court or, in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance, Diamond Cab Co. of Miami v. King, 146 So.2d 889, 891 (Fla. 1962).

Gulf's 19 page Motion for Reconsideration is replete with attempts to reargue points made by the company at hearing, but rejected by the Commission in Order No PSC-97-0847-FOF-WS

I. END RESULT DOCTRINE

2 The Citizens agree with Gulf that the final rates (end result) approved by the Commission should be just and reasonable and that they should fairly compensate the utility for its prudent

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August 11, 1997

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket Nos. [redacted]29-WS and 960234-WS

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Citizens Response to Motion for Reconsideration for filing in the above-referenced docket

Also enclosed is a 3.5 inch diskette containing the Citizens Response to Motion for Reconsideration in WordPerfect for Windows 6.1. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter

Sincerely,

Stephen C. Reilly
Associate Public Counsel

SCR/dsb
Enclosures

operating expenses and investment in utility plant used and useful in providing utility service to its customers. The case law cited by the company in its motion, as well as Chapter 367 081, Florida Statutes, requires the Commission to approve final rates that will be just, reasonable and compensatory. However, the Commission should reject the utility's suggestion that it will not be able to operate or provide quality service if the Commission does not reconsider its Order. The Attachment 1 to Mr. Moore's Affidavit clearly shows that the problems which it alleges, are due entirely to the Company's issuance of an excessive amount of debt in 1988, not any decision of the Commission. As the Citizens' pointed out in their brief, Mr. Moore testified that the utility borrowed $10,000,000 in 1988, yet it was not required to borrow this much money. (Tr. 578) Furthermore, on cross-examination, Mr. Moore conceded, the amount of the IRDB issued by the utility was a decision made by the utility not customers. (Tr. 579) Likewise, Mr. Moore admitted that the losses sustained because of these bonds were the result of management decisions, not customer or developer decisions. (Tr. 579-80) The loss depicted in Attachment 1 to Mr. Moore's Affidavit is due solely to the issuance of bonds which greatly exceeded the capital requirements of the utility. As shown on Attachment 1 to Mr. Moore's Affidavit, the Commission's Order provides the Company with $608,558 of operating income. A loss is only sustained due to the excessive interest associated with debt financing in excess of what the utility needed to serve its customers. Any shortfall should be absorbed by the utility's stockholders, not ratepayers. Accordingly, the Commission should reject Gulf's request for reconsideration based upon the "end result" doctrine.

II. INTERIM RATE REVENUE DEFICIENCY

3. Gulf argues that because of the First District Court of Appeals decision in Southern States Utilities, Inc. v. Florida Public Service Commission, 22 Fla. L. Weekly D1492 (Fla. 1st DCA June

17, 1997), the Commission should allow the utility to collect, in a surcharge fashion, the difference between the revenue requirement in the interim award and its final decision. Gulf misconstrues the court's finding. In Southern States the Court found that SSU should be allowed to surcharge customers that had previously underpaid due to an erroneous decision on final rates by the Commission, not a decision on interim rates. In Southern States, without the surcharge to customers who underpaid, SSU would have not collected the revenue requirement the Commission found reasonable. No such circumstances exist in the instant case. There has been no finding that the Commission's interim increase was erroneous. The Commission's final increase does not render its interim increase invalid or wrong. The utility will be allowed to collect from its customers the full amount of any interim increase the Commission granted.

4. The suggestion that the utility be permitted to collect a surcharge for the difference between the interim increase and the final increase is without merit. The Commission's rules and the Florida Statutes provide for different methods of calculating interim and final rates. In fact, the statute governing interim rate increases is designed such that the utility can not recover costs outside the test year selected for the interim increase. For example, when a utility selects a projected test year for its final rate request, an historical test year must be used for interim purposes according to Chapter 367.082, Florida Statutes. While Section (1) of Chapter 367.082, Florida Statutes, makes reference to the use of a projected rate base in determining interim rates, Section (5) of the same statute requires the use of the most recent 12-month historic period. In Docket No. 950495-WS, Southern States Utility filed an interim rate request using a projected rate base, and the Commission denied the request and ordered Southern States to refile using a historic rate base. If it were not the intention of the Legislature for the awards for interim and final to be somewhat different, it would not have

required a different method for calculating interim rates from permanent rates. For these very reasons, the interim award as allowed by statute will in most cases be less than the Commission's final award. To allow the utility to collect the difference between its interim increase and a final increase would effectively nullify the requirements of Chapter 367.082, Florida Statutes, concerning interim rate increases. Furthermore, such a mechanism would likely allow the utility to overearn during the period that interim rates were in effect if the surcharge were included. Such situations could easily happen because the test period for final rates generally includes events outside the historical test year used for interim purposes and during the time period in which interim rates are in effect. The Commission's should reject Gulf's claims and not grant the requested surcharge

III. RATE BASE - ONE MILLION GALLON REJECT HOLDING TANK

5. The Commission properly excluded the costs associated with construction of the one million gallon reject holding tank from the rate base of Gulf for this proceeding. Under cross-examination at the hearing, the company's president, Mr. Moore, conceded that the contract to construct the facilities had not been executed, and that even the plans to build the tank and appurtances had not been finalized. (T. 128-29) The company had the obligation to present evidence, which is made a part of the record, to support the inclusion of this facility in its rate base. At the hearing, the company clearly failed to meet this burden. It is not appropriate for Gulf to now utilize a Motion for Reconsideration to supplement the record to bolster its case on this issue, after the hearing has been concluded. That is not the purpose of a Motion for Reconsideration, per the Diamond Cab Co. case.

6. In its motion the company suggests that Chapter 367.081(2), Florida Statutes, requires the Commission to include the investment to construct these facilities in the company's rate base. To

support this proposition the Company quoted the following portion of Chapter 367 081(2), Florida Statutes:

> The Commission shall also consider the investment of the utility in land acquired or facilities constructed or to be constructed in the public interest within a **reasonable** time in the future, **not to exceed**, unless extended by the commission, 24 months from the end of the historical period used to set final rates. (emphasis supplied)

The plain language of the statute only requires the Commission to consider the investment of the utility in land acquired or facilities constructed within a reasonable time in the future not to exceed two (2) years. With the two years ending on December 31, 1997, and given the record evidence of this case, the Commission is well within its discretion, granted by the statute, to disallow the inclusion of this investment.

7. In the alternative, the company argues that if the record does not adequately support the inclusion of these facilities in Gulf's rate base, the docket should remain open so that upon completion of the project the Commission could include the investment in Gulf's rate base and adjust the revenue requirement appropriately. Gulf argues that leaving the docket open for this sole purpose would be "much more" cost effective for Gulf's customers than forcing Gulf to file a separate limited proceeding to try to recover its costs. Such a procedure might be a reasonable option if the Commission could satisfy itself that a material savings could be realized for the ratepayers. However, upon verification that the facilities have been completed, the Commission must also verify the proper amount of CIAC to offset the investment and the proper used and useful percentage of the facilities

IV. USED AND USEFUL

A. December 31, 1996 Approved Test Year Flows

8. It is not evident how the Commission determined used and useful percentages for the Company's water and wastewater treatment plants. However, if the Commission considers Gulf's calculations as shown in Appendix D and E to its Brief, a correction needs to be made to Appendix D. In that Appendix, Gulf calculates the 1996 increment of flow to be added to 1995 flows as 430 ERCs times 365 gallons per ERC. At page 19 of the Commission's Order, it found this figure to be incorrect. The Commission stated: "We also find that the single family ERC flows of 396 gallons per ERC for water and 250 gallons per ERC for wastewater presented by the utility in its MFRs are too high Current flows for single family residences should actually be 206 gallons per ERC for water and 158 gallons per ERC for wastewater." Thus, if the Commission reconsider's its Order on this matter, the additional gpd to be added for 1996 flows should be 88,580 gpd not the 157,000 shown in Appendix D to Gulf's Brief. This would lower the used and useful percentage for the water plant to 79.97%.

9. If the Commission revisits the used and useful percentages for the water and wastewater treatment plants it should correct the mistake made on page 16 of the Order relating to the margin reserve allowance. On page 16 the Commission approved a 18 month margin reserve allowance of 283,773 gpd for water treatment and 112,812 gpd for wastewater treatment These allowances are not based upon the approved 206 gallons per ERC for water or the 158 gallons per ERC for wastewater. When the approved 18 month margin reserve period is calculated with the correct gallon flow per ERC, it reduces the water margin reserve to 132,870 gpd and the wastewater margin reserve

to 112,812 gpd. These correct margin reserve allowances should be used when calculating the used and useful percentages of Gulf's water and wastewater treatment facilities

B. Overstating Non-used and Useful Investment in Wastewater Treatment Plants

10. Gulf makes two arguments with respect to overstating non-used and useful investment in wastewater treatment plants First, Gulf claims that the Commission overlooked the fact that it concluded in its Order that the San Carlos plant is 100% used and useful, but that the Commission apparently applied a non-used and useful percentage to this investment It is unclear from the Commission's Order if any alleged error occurred However, it appears from examining Appendix E to Gulf's Brief, that the Commission correctly applied its used and useful adjustment only to the Three Oaks wastewater treatment plant.

11. Second, Gulf claims that the Commission also concluded that phases 1 and 2 of the Three Oaks plant is 100% used and useful and thus no used and useful adjustments should be made Gulf is mistaken. The Commission made no such finding. The Commission found that "no adjustments will be made to the old Three Oaks WWTP." (Order, p. 14.) The Commission made this finding when considering separate used and useful percentages for the old Three Oaks plant relative to the new Three Oaks plant. (Order, p. 13.) In fact, the Commission quoted the utility's witness, Mr Elliot, that "[t]he old plant is an integral part of the system and necessary according to DEP rules requiring redundancy for Class 1 operation." (Ibid.) Clearly, the Commission's application of used and useful percentages to the entire plant is consistent with the determination that the old plant is an integral part of the new plant. Furthermore, to assume that phases 1 and 2 (old plant) are 100% used and useful and that phase 3 (new plant) is less than 100% used and useful would be inconsistent with the Commission finding not to adopt different used and useful percentages.

12. OPC witness Biddy testified that the old Three Oaks WWTP is currently off line. In Order No. PSC-97-0847-FOF-WS the Commission stated:

> "OPC proposed that the old Three Oaks plants [sic] be considered 60.59 percent used and useful and the new plant to be 64.63 percent used and useful. There is no precedent for this type of consideration, nor did OPC provide any record support for using different percentages of used and useful for the old and new plants." (Order, p. 13)

The Commission should deny Gulf's request for reconsideration as there is no mistake of law or fact in the Commission's Order.

C. Imputed CIAC on Margin Reserve

13. Gulf claims that due to the errors just identified with respect to the Three Oaks wastewater treatment plant that imputed CIAC is overstated. As the Citizen's just showed, the Commission made no error with respect to the Three Oaks wastewater treatment plant Therefore, no adjustment to imputed CIAC is required. The Commission should reject Gulf's request for reconsideration.

D. Valuation Date of CIAC

14. Gulf claims that the Commission erred in determining the amount of CIAC because Staff (and the Commission) used a test period ending September 30, 1996, but the test year approved by the Commission was December 31, 1996. The utility made this same argument during the hearing and the Commission rejected it. Neither the Staff, nor the Commission, used an "unapproved" test year as alleged by the utility. The Commission merely used the 13-month average ending September 30, 1996 to test the reasonableness of the Company's projections. This test proved the utility's projections to be unreasonable. Accordingly, the Commission correctly increased the amount of

CIAC included in the projected test year. The Commission should dismiss the utility's suggestion of error. In its motion the utility is merely rearguing a position that was rejected by the Commission.

V. NET OPERATING INCOME

A. Customer Survey

15. Gulf Utility argues that the Commission overlooked its argument that the purpose of an annual customer survey is to practice good management which anticipates problems and solves them early. According to Gulf this is reason to allow the full cost of an annual survey in test year expenses. The Commission found that considering Gulf's record of good customer service, "it seems that a survey could be conducted every five years and still be effective and informative." (Order, p. 71.) The Commission further found that "if the utility wishes to receive feedback on a more frequent basis, it could achieve the same results by including a note or questionnaire in the monthly bill." (Order, p. 71.) The Commission rightly concluded that a customer survey is not necessary every year and that the same result could be accomplished at essentially no cost by including a questionnaire in with the customer's bills. Gulf has failed to point out any matter of law or fact which the Commission failed to consider or overlooked.

B. Added Labor and Chemical Costs

16. Gulf suggests that the Commission erred by not including in test year expenses chemical costs for stabilizing water in the distribution system and the cost of two additional operators with the expansion of the Corkscrew WTP. Gulf alleges that these expenses should have been included in test year expenses because they were noted in the Staff Audit Report (Exhibit 24, p. 40.) It is not the Commission's duty to include expenses in the test year which were not requested by the utility. The subject of these costs were not identified as an issue in the Prehearing Order in this case, nor did the

company comply with the requirements of Commission Rule 25-22.056, Florida Administrative Code, to advance this issue. Section (3)(a) of this rule requires: "In the event that a new issue is identified by a party in a post-hearing statement, that new issue shall be clearly identified as such, and a statement of position thereon shall be included." Gulf's only mention of this issue in its post-hearing statement was a brief note buried in an Appendix which was referenced as additional documentation to Issue No. 51, relating to the appropriate provision for income tax expense, before any rate increase for water or wastewater respectively. This section of the rule also provides that any issue or position not included in the post-hearing statement shall be considered waived.

17. The Company argues that since the Staff recognized these costs in a Staff audit they were duty bound to include the allowance in their recommendation for operating income. Gulf argues that Staff's failure to include this allowance in their recommended operating income should be corrected by the Commission. The Commission should reject this argument. It was Gulf who failed to include this allowance in the minimum filing requirements, it was Gulf who continued to fail to identify it as an issue, even after the Staff audit was published, and it was Gulf who failed to properly identify it or brief it in its post-hearing statement. It is Gulf's responsibility to make its case, not the Staff's responsibility, and the consequences of this failure should be borne by Gulf. The Commission should deny Gulf's request to include this allowance in the company's operating income, because it failed to properly present or defend this issue before the Commission.

C. Salaries and Expenses Allocation

18. Gulf argues that the Commission's Order misapplies the law by failing to take into consideration alleged actual updated information in allocating salaries and other expenses between Gulf and its affiliate Caloosa. Gulf claims that Exhibit 32, which it provided to the Staff and the

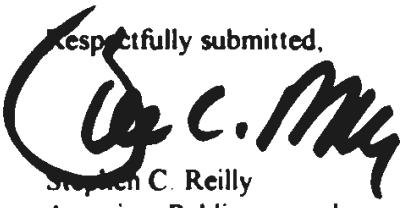
Citizens and which was used by the Commission as the basis for its allocation, has been updated and now shows only salary. Gulf further claims that Mr. Cardey's analysis should be used to determine the amount of salaries and expenses that should be allocated to Caloosa. Gulf's arguments should be dismissed for several reasons. First, they are nothing more than a reargument of positions debated at the hearing. Second, Exhibit 32 was a document produced by the Company and was a September 1995 through August 1996 "Earnings and Deductions" Report. It showed the time spent on Caloosa projects as well as the related salary. It was objective evidence provided by the utility The Commission, as well as the Staff, and the Citizens' witness had good reasons to rely on this document to determine the amount of salaries that should be allocated or charged to Caloosa Third, the newly updated "Earnings and Deductions" Report referred to by Gulf in its brief, is not in evidence and hence could not have been relied upon by the Commission Fourth, the Commission rightfully rejected the method employed by the utility's witness, by concluding that it was subjective.

19. The utility suggests that Mr. Cardey's analysis was based upon "actual time" and that as such comports with the requirements of Sunshine Utilities v. Public Service Commission, 624 So.2d 306, 312. Mr. Cardey's analysis was not, as alleged, based upon actual time, as none of the employees that worked for both the utility and Caloosa kept time records of the amount of time they spent working for each company. Mr. Cardey's analysis was based upon subjective judgements, not objective records. In Sunshine the Court found that "actual time sheets" were submitted to support the allocation advocated by the utility in the Sunshine Case (Sunshine, 312) No such time sheets were submitted in the instant docket. The Commission should reject Gulf's request for reconsideration as it raises no matters of fact or law overlooked by the Commission The

Commission should likewise reject Gulf's claims of error concerning related expenses as the foundation for this allocation was the salaries which the Commission correctly determined

WHEREFORE, the Citizens respectfully request the Commission to deny Gulf's Motion for Reconsideration and affirm its Final Order, with the exception of correcting the margin reserve allowance as outlined in paragraph 9.

Respectfully submitted,



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CERTIFICATE OF SERVICE
DOCKET NOS. 960234-WS AND 960329-WS

I HEREBY CERTIFY that a correct copy of the foregoing has been furnished by U S. Mail or *hand-delivery to the following parties on this 11th day of August, 1997

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