BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for order to show cause against Service Management Systems, Inc. in Brevard County for failure to properly operate and manage water and wastewater system.	DOCKET NO. 100318-WS ORDER NO. PSC-11-0097-FOF-WS ISSUED: February 2, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Background

Service Management Systems, Inc. (SMS or utility) is a Class B utility that provides water, wastewater, and non-potable irrigation services to approximately 370 customers in Brevard County. The utility's 2008 annual report shows combined water and wastewater revenues of $379,622, and a net operating loss of $75,994. The utility has been providing service to customers in Brevard County since 1984. In 1989, we granted the utility original Certificate Nos. 517-W and 450-S.[1] A name change and a series of majority control transfers by Aquarina Developments, Inc. led to the certificates being transferred to SMS under IRD Osprey, LLC d/b/a Aquarina Utilities in 2003.[2]

On January 8, 2009, Oak Lodge Utility, LLC (Oak Lodge) filed an application for transfer of majority organizational control of SMS from IRD Osprey, LLC to Oak Lodge.[3] By an Objection to Application for Transfer of Majority Organizational Control dated February 13, 2009, Compass Bank (Bank) advised our staff that SMS had an outstanding loan that was in default and that on October 6, 2008, the Bank had filed a foreclosure action against SMS, Compass Bank v. Service Management Systems, Inc. et al., Case No. 05-2008-CA-61639, in the Circuit Court for Brevard County, Florida. On February 3, 2010, the Eighteenth Judicial Circuit

[1] Order No. 22075, issued October 19, 1989, in Docket No. 880595-WS, In re: Objections by Service Management Systems, Inc. for water and sewer certificates in Brevard County.
[2] Order No. PSC-03-0787-FOF-WS, issued July 2, 2003, in Docket No. 020091-WS, In re: Application for transfer of majority organizational control of Service Management Systems, Inc., holder of Certificates Nos. 517-W and 450-S in Brevard County, from Petrus Group, L.P. to IRD Osprey, LLC d/b/a Aquarina Utilities.
[3] Docket No. 090019-WS, In re: Application for transfer of majority organizational control of Service Management Systems, Inc., holder of water Certificate No. 517-W and wastewater Certificate 450-S, in Brevard County, from IRD Osprey, LLC to Oak Lodge Utility, LLC.

issued an Order Appointing Receiver of SMS and named Mr. Dennis Basile as receiver, which we acknowledged by Order No. PSC-10-0329-FOF-WS.[4]

Oak Lodge withdrew its application for transfer of majority organization control on February 10, 2010, and the docket was closed on March 5, 2010. On April 15, 2010, FL-Service Management, LLC (the LLC) acquired ownership of SMS by virtue of being the high bidder at the foreclosure sale. Consequently, the LLC owns, and has retained an operator to operate, the water and wastewater treatment utility facilities in Brevard County, Florida that were previously owned by SMS. Docket 100094-WS remains open pending the sale of the utility by the Bank to a permanent owner.

On June 7, 2010, Aquarina Utility Association, Inc. (the Association) filed a Petition for Order to Show Cause Against SMS in Brevard County for Failure to Properly Operate and Manage Water and Wastewater System (Petition). In its Petition, the Association requested that we enter an order directing the LLC to "show cause why the rates being charged to customers should not be reduced due to the hazardous condition of the plant facilities which threaten the public health and safety as well as the environment."[5] The LLC filed a Motion to Dismiss the Association's Petition on June 28, 2010, to which the Association responded on July 8, 2010 (Response to Motion to Dismiss). By Order No. PSC-10-0624-FOF-WS,[6] we granted the LLC's Motion to Dismiss and dismissed the Association's Petition without prejudice, giving the Association leave to amend its petition.

Instead, the Association filed a Motion for Reconsideration of Order No. PSC-10-0624-FOF-WS (Order) on November 3, 2010. On November 15, 2010, the LLC filed its Response in Opposition to the Association's Motion for Reconsideration (Response). This Order addresses the Association's Request for Oral Argument and Motion for Reconsideration. We have jurisdiction over this subject matter pursuant to the provisions of Chapter 367, Florida Statutes (F.S.) and Rule 25-22.060, Florida Administrative Code (F.A.C.).

Analysis and Decision

Oral Argument Request

Pursuant to Rule 25-22.0022(1), F.A.C., the Association filed its Request for Oral Argument concurrently with its Motion for Reconsideration on November 3, 2010. Rule 25-22.0022(3), F.A.C., provides that granting or denying a request for oral argument is within our sole discretion. Only parties to the docket and the staff attorney may participate in oral argument at an agenda conference on a motion for reconsideration pursuant to Rule 25-22.0022(7)(a), F.A.C. Traditionally, we have granted oral argument upon a finding that it would aid in our understanding and disposition of the underlying motion.

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[4] Issued May 24, 2010, in Docket No. 100094-WS, In re: Notice of appointment of receiver for Service Management Systems, Inc. in Brevard County pursuant to Circuit Court foreclosure proceeding.
[5] Petition at 1.
[6] Issued on October 19, 2010, in Docket No. 100318-WS, In re: Petition for order to show cause against Service Management Systems, Inc. in Brevard County for failure to properly operate and manage water and wastewater system.

In FL-Service Management, LLC's (LLC) Response in Opposition to the Association's Motion for Reconsideration (Response), the LCC objects to the Association's Request for Oral Argument. The LLC states that oral argument would serve no purpose other than to allow the Association to reargue matters that we have thoroughly addressed and fully considered and would place an unnecessary economic burden on the utility, whose financial resources are already strained and better directed toward utility operations.

At the Agenda Conference on January 25, 2011, we determined that we would not benefit from oral argument and that oral argument was unnecessary because the Association's arguments were adequately contained in its Motion for Reconsideration. In addition, based on the Motion for Reconsideration, we agreed with the LCC that the Association would use oral argument to improperly reargue matters that we have fully addressed and considered. Accordingly, we denied the Association's Request for Oral Argument.

Motion for reconsideration

Legal Standard

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which we overlooked or failed to consider in rendering our Order. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). The purpose of reconsideration is to bring to our attention a specific point that, had we considered it when it was presented in the first instance, would have required a different decision. State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817, 819 (Fla. 1st DCA 1958) (Wigginton, J., concurring); Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959). Our decision to grant a motion for reconsideration must be based on specific factual matters rather than an arbitrary feeling that we may have made a mistake. Stewart Bonded Warehouse, Inc., 294 So. 2d at 317 (overturning a Commission order on reconsideration because the Commission's basis for granting reconsideration was to reweigh the evidence, which was "not sufficient").

Parties' Arguments

Association's Motion for Reconsideration

The Association identifies three things that it believes we overlooked or failed to properly consider. First, the Association claims that we did not apply the appropriate motion to dismiss standard by considering facts outside the scope of the Petition and by not drawing inferences in favor of the Association. Second, the Association contends that we overlooked or failed to address the Association's request for a limited proceeding. Finally, the Association asserts that we overlooked or failed to properly consider the facts alleged by the Association and our own rules relating to utility plant operations and safety.

Motion to Dismiss Standard

The Association argues that we improperly relied upon facts outside the four corners of the Association's Petition in considering the LLC's Motion to Dismiss. While the Association acknowledges that we identified the appropriate standard of review to apply in disposing of a motion to dismiss, the Association states that it is "impossible to understand how the Commission could have rationally concluded that the utility is in compliance and is being safely operated" based on the Association's allegations.[7] The Association contends that the only logical explanation for our decision to grant the LLC's Motion to Dismiss is that we relied on incomplete facts discovered by staff, facts asserted in the LLC's responsive pleadings, and answers given to Commissioner Skop's questions of our staff and the utility at the September 28, 2010 Agenda Conference. The Association asserts it is "troubling" that Commissioner Skop had access to staff's data requests and the utility's responses to those data requests and that we spent considerable time openly inquiring about facts not found in the Association's Petition. The Association cites extensively from the September 28, 2010 Agenda Conference transcript in support of its contention that our decision to dismiss the Association's Petition was based on evidence outside the four corners of the Petition.

Limited Proceeding

The Association asserts that in Order No. PSC-10-0624-FOF-WS, we read Section 367.011(1), F.S., as limiting our jurisdiction to service and rates.[8] However, the Association states that the language in that subsection does not preclude us from exercising jurisdiction over safety, rather it merely provides that our jurisdiction over service and rates is exclusive. Citing Sections 367.111(2)[9] and 367.121(1)(d),[10] F.S., the Association notes that we have the power to require repairs to any facility if necessary to provide adequate and proper service and that we have exercised that power in past cases. Accordingly, the Association claims it was appropriate and within our jurisdiction to grant the Association's request for a limited proceeding to investigate the potential health, safety and environmental hazards posed by the operation of the utility's facilities and equipment.

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[7] Motion for Reconsideration at 3.

[8] We believe that the Association intended to cite Section 367.011(2), F.S., which states: "The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates."

[9] Sections 367.111(2), F.S., states, in pertinent part, that each utility's "service shall not be less safe, less efficient, or less sufficient than is consistent with the approved engineering design of the system and the reasonable proper operation of the utility in the public interest. If the Commission finds that the utility has failed to provide its customers with water or wastewater service that meets the standards promulgated by the Department of Environmental Protection or the water management districts, the Commission may reduce the utility's return on equity until the standards are met."

[10] Section 367.121(1)(d), F.S., states: "In the exercise of its jurisdiction, the commission shall have power... To require repairs, improvements, additions, and extensions to any facility, or to require the construction of a new facility, if reasonably necessary to provide adequate and proper service to any person entitled to service or if reasonably necessary to provide any prescribed quality of service."

Association's Factual Assertions and Commission Rules

The Association contends that we overlooked significant facts, and improperly relied on others, when deciding whether the utility's operating conditions constituted a violation of our rules. The Association cites several rules, namely Rules 25-30.225(3), (5), (7) and 25-30.235, F.A.C., and asserts that the Association's allegations, if true, should have given rise to a reasonable inference that the utility is in violation of those rules. The Association also cites additional Florida Department of Environmental Protection (FDEP) and Occupational Safety and Health Administration (OSHA) rules that it claims the utility is violating. For example, the Association cites 29 C.F.R. §1910.22(b)(1), an OSHA rule which states that "[a]isles and passageways shall be kept clear and in good repairs, with no obstruction across or in aisles that could create a hazard," to show that we should not have dismissed the Petition in light of the Association's allegation that the utility's catwalk is obstructed by a 25-foot clarifier arm. In sum, the Association asserts that we can and should have invoked our authority to command the utility to show cause why it should not be held to account for its violation of our rules because the Association alleged sufficient facts to raise an inference that the utility is in violation of Rules 25-30.225 and 25-30.235, F.A.C.

In conclusion, the Association contends that it alleged sufficient facts to raise a reasonable inference in our minds that the utility is out of compliance with Commission, FDEP, and federal operational and safety rules and that the relief requested by the Association, i.e., an order requiring the LLC to show cause why its rates charged to customers should not be reduced or, in the alternative, a limited proceeding commenced, was within our authority to grant.

LLC's Response in Opposition

The LLC argues that we should deny the Association's Motion for Reconsideration because it fails to meet the standards for reconsideration prescribed by Florida law and because the Association improperly attempts to use our reconsideration procedures to cure defects in its Petition and reargue matters that we have fully aired and carefully considered. The LLC contends that the Motion for Reconsideration should also be denied because we applied the appropriate motion to dismiss standard. The LLC further asserts that we appropriately declined to grant the discretionary relief the Association requested.

Motion for Reconsideration Standard

The LLC states that a motion for reconsideration is not the appropriate vehicle for rearguing matters that we have already considered. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962). See also United Gas Pipe Line Co. v. Bevis, 336 So. 2d 560, 565 (Fla. 1976) (reh'g den. April 7, 1976) (holding that rehearing should be denied in light of the multi-page, argumentative rehearing petitions filed because "it is not the office of rehearing to invite a complete re-analysis of all that has gone before"). The LLC asserts that the Association's 16-page Motion for Reconsideration is nothing more than a regurgitation of broad and general quality of service allegations that we thoroughly considered and rejected as legally insufficient to withstand a motion to dismiss.

The LLC also asserts that reconsideration is not the appropriate vehicle for amplifying allegations and making new arguments to cure defects in earlier pleadings. The LLC argues that the Motion for Reconsideration is merely an attempt to rehabilitate the deficiencies in the Association's pleadings that we identified in Order No. PSC-10-0624-FOF-WS, which is an abuse of our reconsideration procedures. According to the LLC, if the Association wishes to rehabilitate its prior deficient pleading, it has ample opportunity to do so by an amended petition.

Motion to Dismiss Standard

According to the LLC, the Association's argument that our decision to dismiss was improperly based on consideration of facts outside the four-corners of the Association's Petition rings hollow. The LLC notes that the Agenda Conference discussions relied upon by the Association were precipitated by counsel for the Association, who improperly attempted to inject information outside the scope of the pleadings over timely objection from LLC counsel and after caution from staff counsel. Furthermore, the LLC contends that there is no indication in the Order dismissing the Association's Petition that we considered those discussions in our decision to dismiss, nor did we make any mention of those discussions in the legal analysis section of that Order. The LLC submits that where our decision has been reduced to a reasoned written order, a party should not be permitted to refashion the grounds of the ruling by reference to gratuitous questions and remarks during an oral argument.

Commission Discretion

The LLC states that the Association, through its Petition, essentially requested two avenues of relief based on general poor quality of service allegations, namely that we initiate a show cause proceeding against the utility and/or a limited proceeding to reduce the utility's rates under Section 367.0822, F.S. The LLC argues that the Association has no organic or statutory right under Florida law to require us to initiate a show cause or limited proceeding, for such a decision is entirely within our discretion. Response at 6, citing Section 367.0822(1), F.S. ("Upon petition or by its own motion the commission may conduct limited proceedings to consider, and act upon, any matter within its jurisdiction, including any matter the resolution of which requires the utility to adjust its rates.") (emphasis added) and Order No. 10-0624-FOF-WS at 5 ("However, the decision to invoke this Commission's show cause procedure is ultimately ours."). According to the LLC, the Association has made no showing that we abused our discretion by rejecting the Association's request to initiate a show cause proceeding or limited proceeding.

Analysis and Decision

For the reasons set forth in greater detail below, the Association's Motion for Reconsideration is denied because we did not overlook or fail to consider a point of fact or law in rendering our order dismissing the Association's Petition.

Motion to Dismiss Standard

We applied the correct legal standard[11] and did not improperly rely on facts outside the four corners of the Association's Petition in deciding to grant the LLC's Motion to Dismiss. First, the Association's attempt to show that we based our decision on evidence outside the four corners of the Petition is disingenuous, at best. Although neither party filed a request for oral argument as required by Rule 25-22.022, F.A.C., we allowed counsel for the Association, Mr. Armstrong, to be heard at the Agenda Conference on September 28, 2010. Upon recognition from the bench, Mr. Armstrong proceeded to distribute hand-outs, including photographs and FDEP letters, which were neither included in nor appended to the Association's Petition, rather than merely making opening remarks. Counsel for the LLC, Mr. May, immediately objected, stating:

> We object to converting what Mr. Armstrong initially led me to believe was to be remarks to be converted into an evidentiary hearing. I don't believe that's appropriate.... We do oppose the introduction of pictures and other documentary evidence or documents which I haven't had an opportunity to review... there are some real due process issues in converting this into an evidentiary hearing from my perspective.

Agenda Conference Transcript at 8. Counsel for the Commission also expressed grave concern, explaining:

> I think it is highly inappropriate for the customers to be bringing to you information which is outside the scope of the [Petition] that was filed. The standard is that you are supposed to accept all facts as true in the [Petition] and not go beyond the scope of that... The law has said that with respect to a motion to dismiss, there are certain things that you can consider and not consider... [Y]ou are not supposed to go beyond the four corners of the initial pleading when you make a determination with respect to the motion to dismiss. So that is why I am suggesting that Mr. Armstrong providing this photograph for you is inappropriate at this time. It is my understanding that that was not filed in his complaint and that it was not addressed by Mr. May in his motion to dismiss.

Agenda Conference Transcript at 9-11. In addition, the transcript excerpts relied upon by the Association were staff's responses to Mr. Armstrong's assertion that staff had essentially done

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[11] The standard of review upon which we relied was as follows: "A motion to dismiss challenges the legal sufficiency of the facts alleged in a petition to state a cause of action. Meyers v. City of Jacksonville, 754 So. 2d 198, 202 (Fla. 1st DCA 2000). The standard to be applied in disposing of a motion to dismiss is whether, with all the allegations in the petition assumed to be true, the petition states a cause of action upon which relief can be granted. Id. When making this determination, only the petition and documents incorporated therein can be reviewed, and all reasonable inferences drawn from the petition must be made in favor of the petitioner. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993); Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DA 1958), overruled on other grounds, 153 So. 2d 759, 765 (Fla. 1st DCA 1963); Rule 1.130, Florida Rules of Civil Procedure (F.R.C.P.)." Order No. PSC-10-0624-FOF-WS at 3.

nothing to gather information or investigate the state of the utility's facilities.[12] As noted by the LLC, the Association improperly attempted to present for our consideration information outside the scope of the pleadings. Nevertheless, the LLC and staff counsel successfully cautioned that we must adhere to the proper motion to dismiss standard of review and only consider information contained within the four corners of the Association's Petition in making our determination.

Second, we disagree with the Association's assertions that we should not have had access to the utility's responses to staff's data requests and that it was inappropriate for us to openly inquire about facts not found in the Association's Petition. The excerpts from the Agenda Conference transcript cited by the Association in support of its position must be considered in their broader context. In staff's recommendation to dismiss the Association's Petition, staff explained that upon circumstances discovered by staff or brought to staff's attention, staff might recommend to us that a show cause proceeding is warranted and should be initiated. However, staff noted that the decision to invoke the Commission's show cause procedure is ultimately within our discretion. Staff further explained that in its Petition, the Association failed to identify any statutory section, rule, or order of the Commission that the utility had violated, nor had it identified facts to support any such violation. Accordingly, staff determined that the Association had failed to demonstrate that a show cause proceeding was warranted and should be initiated; therefore, staff recommended that the Commission dismiss the Petition.

In considering the Association's Petition, however, we could have taken several courses of action as a regulatory body. As explained by staff counsel at Agenda, even if we dismissed the Petition as legally deficient, we could initiate a show cause proceeding on our own motion based on evidence gathered by staff, or ask staff to monitor the utility for potential show cause violations in the future:

> **Ms. Helton**: [Y]ou could agree with staff here, dismiss the complaint, but you could also ask the staff would you please go and do some further information gathering with respect to this utility. Let's see if there really is a problem or not. It is my understanding that before staff brought their recommendation to you that they, in fact, did do that. They did some initial information gathering, and based on what they learned, they did not see that there was a problem. Maybe they didn't dig far enough, I don't know the answer to that question.

Agenda Conference Transcript at 11.

. . .

> **Ms. Helton**: My recommendation still is . . . to dismiss the petition. That being said, I think that you have the ability, the authority, the jurisdiction, to direct the staff to go back and look at this utility more closely and to decide whether there

[12] Staff's comments were precipitated by Mr. Armstrong's asking, "[H]ow does the Public Service Commission staff, which apparently hasn't gone out to the facilities, has done what appears to be very little to have discussion to look at what the customers are complaining about here, how can they say that this Commission shouldn't even consider the customers' plight and their complaint?" Agenda Conference Transcript at 7.

> are potential violations or apparent violations of a rule, statute, or order under your jurisdiction. And if so, to make a recommendation to you to initiate show cause proceedings.
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> **Commissioner Skop**: All right. So just for clarity, the show cause proceeding would have to be initiated by staff?
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> **Ms. Helton**: We would recommend to you, to the Commission, to initiate a show cause proceeding.

Agenda Conference Transcript at 24-25.

> **Ms. Helton**: . . . If you all decide after -- direct staff to go back and look at the utility more closely, you cannot grant the petition to show cause regardless. There are some . . . specific legal steps that have to be made that are laid out in Chapter 120 and in the Uniform Rules of Procedure, and it would be that staff would have to have gathered sufficient information to recommend to you that the utility is violating a specific rule, statute, or order, and then you on your own motion would issue a show cause order.

Agenda Conference Transcript at 23-24.

> **Ms. Helton**: ... [J]ust because you have dismissed the complaint does not mean that you then bury the issues that have been raised here. It means you can direct the staff to go back and investigate this utility further. You can go back and have engineers go out and look at the facility, if they haven't already. You can conduct more discovery. They can talk to DEP. You can see if there really is a legitimate question or issue that you have jurisdiction over, and you can direct the staff that if you find an apparent violation of a rule, statute or order over which you have jurisdiction, to bring a recommendation back to you at a later date and recommend appropriate action be taken to ensure that the customers of this utility get good service.

Based upon staff's recommendation, our inquiries were designed to determine whether staff had garnered enough evidence *on its own* to recommend that we initiate a show cause proceeding against the Utility independently, notwithstanding the Association's insufficient Petition. After asking specific questions of staff, we indicated that we did not "see any evidence of . . . willful violations of our statutes, rules, or orders," and that we were "not able to conclude that a basis for show cause violation exists at this time." Agenda Conference Transcript at 16. Accordingly, we decided not only to dismiss the Petition but not to initiate a show cause proceeding on our own motion.

Finally, there is no indication in Order No. PSC-10-0624-FOF-WS that we considered the discussions cited by the Association in deciding to dismiss the Petition. Indeed, the Order

dismissing the Association's Petition makes no mention of those discussions anywhere in the legal analysis section. The Order states, in relevant part:

> Assuming that all of [the Association's] allegations are true, and viewing all reasonable inferences in favor of the Association, it has not alleged facts sufficient to make a prima facie showing that the utility is willfully violating or refusing to comply with any rule, statute or order of the Commission. Furthermore, the Association has not cited to any FDEP or county health department notices of violation, consent orders, or rule violations. Accordingly, a proceeding requiring the utility to show cause why it should not be fined is inappropriate and shall not be initiated.
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> * * *
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> The Association has failed to make substantive allegations that there is a service quality problem which would warrant a reduction to the utility's return on equity or a requirement that the utility make certain repairs. The Association does not make specific factual allegations that the standards prescribed by this Commission or promulgated by the FDEP are not being met or that the utility is not providing adequate service, nor does it specifically identify any "violations" or "deficiencies." As noted above, the Association has failed to cite to any FDEP or county health department notices of violation or consent orders. The Assocation's conclusory assertions are unsupported by sufficient factual allegations.

Order No. PSC-10-0624-FOF-WS at 6 and 7. We agree that where our decision has been memorialized in a reasoned, written order, a party should not be able to speculate as to alternative grounds for our ruling by reference to extraneous questions and remarks at the Agenda Conference. Therefore, the Motion for Reconsideration is denied because we did not rely upon the information gathered by staff or adduced at the Agenda Conference as a basis for dismissing the Association's Petition.

Limited Proceeding

Furthermore, we did not make a legal mistake in dismissing the Association's request for a limited proceeding. The Association asserts that in light of Sections 367.111(2) and 367.121(d)(1), F.S., we incorrectly interpreted Section 367.011(2), F.S., as precluding us from exercising jurisdiction over safety. However, there is nothing in Order No. PSC-10-0624-FOF-WS that supports this assertion. To the contrary, we noted on page 6 of the Order that "[e]ach utility is required to provide *safe*, efficient, and sufficient service" pursuant to Section 367.111(2), F.S., and that we can require repairs to the utility's facilities or reduce the utility's return on equity until safety standards are met (emphasis added). The Association correctly asserts that we have jurisdiction to grant requests for a limited proceeding in order to investigate a utility's facilities and equipment and that we have done so in the past. However, we will not grant such a request without cause. As reflected in our Order, we considered the Association's vague, general, and conclusory, rather than demonstrative, "safety hazard" allegations and

rejected them as insufficient to warrant such discretionary relief. Accordingly, we deny the Association's Motion for Reconsideration on this basis.

Association's Factual Assertions and Commission Rules

Finally, the Association's Motion for Reconsideration is improper because the Association reargues its entire case and puts forth new legal arguments that it failed to include in its original Petition rather than identifying a point of fact or law that we overlooked or failed to consider in the first instance.[13] A motion for reconsideration is not the appropriate vehicle for rearguing matters that we have already considered. Diamond Cab Co. of Miami, 146 So. 2d at 891 (holding that it is not the province of reconsideration to provide "a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order"); Sherwood, 111 So. 2d at 98 (citing State ex. rel. Jaytex Realty Co., 105 So. 2d at 819 (Wigginton, J., concurring) (stating that it is inappropriate to reargue in a motion for reconsideration matters that have already been considered); Stewart Bonded Warehouse, Inc., 294 So. 2d at 316-317 (noting that it is improper in a motion for reconsideration to ask the deciding body to reexamine the evidence presented and "change its mind"). The Association spends seven pages of its fifteen-page Motion for Reconsideration amplifying its initial factual allegations and identifying numerous rules and statutes that were mentioned nowhere in its original Petition. Motion for Reconsideration at 6-14. Accordingly, the Motion for Reconsideration is inappropriate.

In addition, the Association improperly uses our reconsideration procedures as a means to fix defects in its original Petition. A motion for reconsideration is not the appropriate vehicle for bolstering allegations and making new arguments to cure an earlier, deficient pleading. Order No. PSC-04-1160-PCO-EI, issued on November 22, 2004, in Docket No. 030623-EI, In re: Complaints by Ocean Properties, Ltd., J.C. Penney Corp., Target Stores, Inc., and Dillard's Department Stores, Inc. against Florida Power & Light Company concerning thermal demand meter error (citing Order No. PSC-92-0132-FOF-TL, issued on March 31, 1992, in Docket No. 900633-TL, In re: Development of Local Exchange Company cost study methodology(ies)) ("This Commission has previously found that where a motion for reconsideration 'more fully develops the arguments in the initial request and adds entirely new arguments...not included in the Company's initial pleading,' such new arguments and explanations are not appropriate matters for reconsideration."). In Order No. PSC-10-0624-FOF-WS, we dismissed the Petition without prejudice, giving the Association leave to file an amended petition. Accordingly, if the Association wants to cure its prior deficient pleading, it can and should do so by filing an amended petition rather than misusing our reconsideration procedure.

Conclusion

The Association's Motion for Reconsideration is denied because we applied the correct legal standard and did not improperly rely on facts outside the four corners of the Association's

[13] As noted by the LLC, the Association's Motion for Reconsideration "reargues its initial case with sound and fury but signifies nothing under Florida law that would require the Commission to reconsider Order No. PSC-10-0624-FOF-WS." Response at 1.

Petition in granting the LLC's Motion to Dismiss. Furthermore, we did not incorrectly interpret Section 367.011(2), F.S., to preclude us from exercising jurisdiction over utility safety matters. Finally, the Motion for Reconsideration is denied because the Association improperly attempts to use our reconsideration procedures to reargue its initial case and to correct deficiencies in its initial petition.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Aquarina Utility Association, Inc.'s Request for Oral Argument and Motion for Reconsideration of Order No. PSC-10-0624-FOF-WS are hereby denied. It is further

ORDERED that this docket shall be closed when the time for an appeal has run.

By ORDER of the Florida Public Service Commission this 2nd day of February, 2011.

ANN COLE
Commission Clerk

(SEAL)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.