

STATE OF FLORIDA

ORIGINAL

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DIVISION OF LEGAL SERVICES
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Public Service Commission

October 3, 2000

Mr. Leon J. Beekman, President
Pine Lakes Estates Homeowners Association
19799 Frenchman's Court
North Fort Myers, Florida 33903

Re: Docket No. 000277-WS - Application for transfer of facilities and Certificates Nos. 353-W and 309-S in Lee County from MHC Systems, Inc. d/b/a FFEC-Six to North Fort Myers Utility, Inc., holder of Certificate No. 247-S; amendment of Certificate No. 247-S; and cancellation of Certificate No. 309-S.

Dear Mr. Beekman:

I am writing in response to you letter dated September 24, 2000. First, the final hearing is currently scheduled for May 31 and June 1, 2001. Second, I have enclosed a copy of Rule 28-106.201, Florida Administrative Code, because the rule cited in the Commission's intervention rule no longer exists. Apparently, when the Uniform Rules of Procedure were enacted the Commission's intervention rule was not fully updated. Therefore, please be guided by Rules 25-22.039 and 28-106.201, Florida Administrative Code.

If you have any questions, please contact me at (850) 413-6185.

Sincerely,

D. Tyler Van Leuven
Staff Attorney

- APP _____
 - CAF _____
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 - OPC _____
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 - RGO _____
 - SEC _____
 - SER _____
 - OTH _____
- cc: DTV/dm
Enclosures (2)
Division of Records and Reporting (without enclosures)
Division of Regulatory Oversight (Johnson, Redemann)
Martin S. Friedman, Esquire
Kathryn G.W. Cowdery, Esquire
Alexander William Varga
- 1:000277LV DTV

DOCUMENT NUMBER-DATE
FFSC-RECORDS/REPORTING
OCT-38

~~presiding officer may enter an order requiring that the absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.~~


Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS. History—New 4-1-97.

28-106.110 Service of Papers. Unless the presiding officer otherwise orders, every pleading and every other paper filed in a proceeding, except applications for witness subpoenas, shall be served on each party or the party's representative at the last address of record.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS. History—New 4-1-97.

28-106.111 Point of Entry into Proceedings and Mediation.

(1) The notice of agency decision shall contain the information required by Section 120.569(1), F.S. The notice shall also advise whether mediation under Section 120.573, F.S., is available as an alternative remedy, and if available, that pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

 (2) ~~Unless otherwise provided by law, persons seeking a hearing on an agency decision which does or may determine their substantial interests shall file a petition for hearing or for mediation with the agency within 21 days of receipt of written notice of the decision.~~

(3) An agency may, for good cause shown, grant a request for an extension of time for filing an initial pleading. Requests for extension of time must be filed with the agency prior to the applicable deadline. Such requests for extensions of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and that the agency and any other parties agree to said extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

(4) Any person who receives written notice of an agency decision and who fails to file a written request for a hearing or mediation within 21 days waives the right to request a hearing or mediation on such matters.

(5) The agency may publish, and any person who has timely requested

mediation may, at the person's own expense, cause the agency to publish, a notice of the existence of the mediation proceeding in the Florida Administrative Weekly or in a newspaper of general circulation in the affected area. The mediation notice can be included in the notice of intended agency action.

(a) The notice of the mediation proceeding shall include:

1. A statement that the mediation could result in a settlement adopted by final agency action;

2. A statement that the final action arising from mediation may be different from the intended action set forth in the notice which resulted in a timely request for mediation;

3. A statement that any person whose substantial interests may be affected by the outcome of the mediation shall within 21 days of the notice of mediation proceeding file a request with the agency to participate in the mediation; and

4. An explanation of the procedures for filing such a request.

(b) The notice shall also advise that in the absence of a timely request to participate in the mediation, any person whose substantial interests are or may be affected by the result of the mediation waives any right to participate in the mediation, and that waiver of participation in the mediation is also a waiver of that person's ability to challenge the mediated final agency action pursuant to Chapter 120, F.S.

(6) If mediation does not result in the settlement of the administrative dispute, the agency shall, within 7 days of the conclusion of the mediation, advise all participants in writing of the right to request, within 14 days, an administrative hearing pursuant to Sections 120.569 and 120.57, F.S.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57, 120.573 FS.

History—New 4-1-97.

PART II HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT
28-106.201 Initiation of Proceedings

(1) Unless otherwise provided by statute, initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the

existence of a disputed issue of material fact. Each petition shall be legible and on 8 1/2 by 11 inch white paper. If less printed, the impression shall be on one side of the paper only and lines shall be doublespaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(f) A demand for relief.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

(4) A petition may be dismissed if it is not in substantial compliance with subsection (2) of this rule or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.

(5) The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition, if applicable.

Specific Authority 120.54(5) FS. Law Implemented 120.569, 120.57 FS.

25-22.0375 Pleadings.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History--New 12/21/81, Formerly 25-22.375, Repealed 05/03/99.

25-22.0376 Reconsideration of Non-Final Orders.

(1) Any party who is adversely affected by a non-final order may seek reconsideration by the Commission panel assigned to the proceeding by filing a motion in support thereof within 10 days after issuance of the order. The Commission shall not entertain a motion for reconsideration of an order disposing of a motion for reconsideration.

(2) A party may file a response to a motion for reconsideration within 7 days after service of the motion for reconsideration.

(3) Failure to timely file a motion for reconsideration or a response shall constitute a waiver of the right to do so.

(4) Any motion or response filed pursuant to this rule shall contain a concise statement of the grounds therefor and the signature of counsel or other person filing the motion.

(5) Oral argument on any motion filed pursuant to this rule may be granted at the discretion of the Commission. A party who fails to file a written response to a point on reconsideration shall be precluded from responding to that point during oral argument.

Specific Authority: 350.01(7), 350.127(2), F.S.

Law Implemented: 120.569, 120.57, F.S.

History: New 9/3/95, Amended 7/11/96.

25-22.038 Prehearing Officer; Prehearing Statement; Prehearing Conferences; and Prehearing Order.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: Transferred from 25-2.68 and Amended 12/21/81, formerly 25-22.38, Amended 09/03/95, Repealed 05/03/99.

~~25-22.039~~ **Intervention.** Persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene. Petition for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Commission Rule 25-22.036(7)(a), and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

Specific Authority: 350.01(7), 350.127(2), F.S.

Law Implemented: 120.53, F.S.

History: Transferred from 25-2.34 and Amended 12/21/81, formerly 25-22.39.

25-22.040 Notice of Hearings.

Specific Authority: 120.53, F.S.

Law Implemented: 120.569, 120.57, F.S.

History: New 12/21/81, formerly 25-22.40, Repealed 7/11/96.

25-22.0405 Notices of Hearing.

(1) The Commission will require public utility in a proceeding to publish additional notices of hearing in newspapers of general circulation in the area