

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for continuation )  
of gross-up of contributions-in- )  
aid-of-construction (CIAC) in Lee )  
County by NORTH FORT MYERS )  
UTILITY, INC. )  
\_\_\_\_\_ )

DOCKET NO. 901013-SU

In re: Petition for distribution )  
of contributions-in-aid-of- )  
construction (CIAC) gross-up )  
monies by NORTH FORTH MYERS )  
UTILITY, INC. in Lee County )  
\_\_\_\_\_ )

DOCKET NO. 910261-SU

ORDER NO. 25724

ISSUED: 2/14/92

ORDER ESTABLISHING PROCEDURE

Pursuant to the protest, filed by North Fort Myers Utility, Inc. to Order No. 25532, issued January 14, 1992, this matter is currently set for an administrative hearing. By Order No. 25698, issued February 7, 1992, the above-referenced dockets were consolidated for purposes of hearing.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission Staff during the prehearing conference, unless modified by the Commission. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and the rules of this Commission.

Discovery

The hearing in these dockets is presently set for June 4, 1992. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by May 28, 1992. In addition, to facilitate their identification, all interrogatories, requests for admissions, and requests for production of documents shall be numbered consecutively. Each set of discovery requests shall be numbered sequentially from any previous set(s). Unless authorized by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 100, and requests for production of documents, including all subparts, shall be limited to 50, and request for admissions, including subparts, shall be limited to 10.

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten

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days of service of the discovery request. This procedure is intended to reduce delay time in discovery.

#### Confidentiality

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective

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agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

#### Notice

The utility shall timely comply with the requirements of Rule 25-22.0406(7), Florida Administrative Code.

#### Prefiled Testimony and Exhibits

Pursuant to Rule 25-22.048, Florida Administrative Code, each party shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 1/2 inch x 11 inch transcript-quality paper, double-spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding.

Each exhibit which is intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, and identified by his or her initials and a consecutive number beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 12 copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting by the close of business (4:45 p.m.) on the date due. A copy of all prefiled testimony and exhibits shall be mailed to all other parties and Staff no later than the date filed with the Commission.

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Prehearing Statement

Pursuant to Rule 25-22.038(3), Florida Administrative Code, a prehearing statement shall be required of all parties in these dockets. Commission Staff will also file a prehearing statement. A copy of the prehearing statement shall be mailed to all other parties and Staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) the name and address of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be sponsored by the party, their contents, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon; and
- (i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

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Prehearing Conference

A prehearing conference will be held in these dockets on May 28, 1992, at the Fletcher Building, 101 East Gaines Street, Tallahassee, Florida. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, shall be observed. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

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Controlling Dates

The following dates have been established to govern the key activities of this case.

- |   |               |
|---|---------------|
| 1) Utility's direct testimony<br>and exhibits             | March 9, 1992 |
| 2) Intervenors' direct testimony<br>and exhibits          | April 8, 1992 |
| 3) Staff's direct testimony<br>and exhibits, if any       | May 8, 1992   |
| 4) Prehearing statements                                  | May 14, 1992  |
| 5) Rebuttal testimony<br>and exhibits                     | May 21, 1992  |
| 6) Prehearing conference<br>in Room No. 122, at 9:30 a.m. | May 28, 1992  |
| 7) Hearing at a time and<br>location to be determined     | June 4, 1992  |

Based upon the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 14th day of FEBRUARY, 1992.

  
 J. TERRY DEASON, Commissioner  
 and Prehearing Officer

( S E A L )

JTD/CB