

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of DEL TURA NORTH )	DOCKET NO. 890975-SU
LIMITED PARTNERSHIP for sewer )	ORDER NO. 22867
certificate in Lee County. )	ISSUED: 4-26-90
_____ )	

ORDER ESTABLISHING PROCEDURE

On July 25, 1989, Del Tura North Limited Partnership (Del Tura or Utility) filed an application for a sewer certificate in Lee County. Subsequently, on November 6, 1989, we granted the Utility Water Certificate No. 456-S. By way of proposed agency action (PAA) Order No. 22682, issued March 13, 1990, we set rates and charges for the Utility.

On April 2, 1990, a timely protest to our PAA Order was received from the Utility demanding that the Commission approve rates and charges without a plant capacity or effluent disposal charge. The protest also demanded a hearing pursuant to Section 120.57(1), Florida Statutes.

A Prehearing Conference has been scheduled for September 17, 1990, and a full evidentiary hearing has been scheduled for October 17, 1990.

Scope

The scope of this proceeding shall be based upon the issues raised by the parties and the Commission staff (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 and regulations of this Commission.

Discovery

When interrogatories or requests for production are served on a party and the respondent intends to object to or ask for clarification of an interrogatory or request for production, the objection or request for clarification shall be made within ten (10) days of service of the interrogatory or request for production. This procedure is intended to reduce delay time in discovery.

DOCUMENT NUMBER-DATE

03620 APR 26 1990

FPC-RECORDS/REPORTING

ORDER NO. 22867  
DOCKET NO. 890975-SU  
PAGE 2

Prehearing Statements

Pursuant to Rule 25-22.038(3), Florida Administrative Code, a prehearing statement shall be required of all parties in this docket on or before September 5, 1990. Staff will also file a Prehearing Statement on this date. Failure of a party to timely file a prehearing statement shall be a 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;

(e) a statement of each question of law the party considers at issue, the party's position on each such issue and which of the party's witnesses will address the 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 why any requirement set forth in this Order cannot be complied with by either party.

ORDER NO. 22867  
DOCKET NO. 890975-SU  
PAGE 3

The original and twelve copies of each prehearing statement shall be filed with the Division of Records and Reporting on or before the close of business on September 5, 1990. A copy of the prehearing statement shall also be mailed to all other parties no later than its filing with the Commission.

Prefiled Testimony and Exhibits

In accordance with Rule 25-22.048, Florida Administrative Code, each party shall be required to prefile all written testimony that it intends to sponsor. Commission Staff may file prefiled testimony in this case. Written 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, each with a sufficient left margin to allow for binding.

A copy of any prefiled exhibit sponsored by a witness shall be attached to his or her testimony and marked for identification. 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 Utility shall file the original and twelve copies of its prefiled written testimony and exhibits with the Division of Records and Reporting on or before the close of business on June 15, 1990. Staff shall file its direct testimony, if any, on August 10, 1990.

The original and twelve copies of all prefiled rebuttal testimony and associated exhibits shall be filed with the Division of Records and Reporting on or before the close of business on August 24, 1990.

A copy of all prefiled testimony and exhibits shall be mailed to all other parties no later than their filing with the Commission.

ORDER NO. 22867  
DOCKET NO. 890975-SU  
PAGE 4

### Prehearing Conference

A prehearing conference will be held on September 17, 1990. 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. Any 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, in fact, 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.

ORDER NO. 22867  
DOCKET NO. 890975-SU  
PAGE 5

Controlling Dates

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

1) The utility shall file its prefiled written testimony and exhibits on or before June 15, 1990.

2) Staff shall file direct testimony, if any, on or before August 10, 1990.

3) Rebuttal testimony and exhibits shall be filed on or before August 24, 1990.

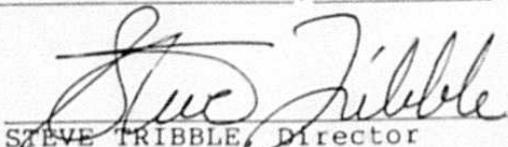
4) Each party and Staff shall file a prehearing statement as set forth in the body of this Order on or before September 5, 1990.

5) A prehearing conference shall be held in Tallahassee on September 17, 1990.

6) The formal administrative hearing shall be held on October 17, 1990 in Lake County at a time and location to be determined.

By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 26th day of APRIL, 1990.

BY:

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

JRF

ORDER NO. 22867  
DOCKET NO. 890975-SU  
PAGE 6

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: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. 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.