

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Revocation by Florida) DOCKET NO. 920782-WU
Public Service Commission of) ORDER NO. PSC-93-1063-PCO-WU
Certificate No. 302-W issued to) ISSUED: July 21, 1993
St. George Island Utility)
Company, Ltd. in Franklin)
County.)

ORDER ESTABLISHING PROCEDURE

Pursuant to Order No. PSC-92-0993-PCO-WU, issued September 15, 1992, this Commission established the procedure by which an administrative hearing would be conducted. This Commission issued a notice of intent to initiate revocation proceedings against St. George Island Utility Company, Ltd., (the utility) on June 10, 1992. The utility filed an objection to the notice on July 9, 1992, which resulted in the matter being set for hearing. As required by Order No. PSC-92-0993-PCO-WU, testimony and prehearing statements were filed by the utility and staff.

However, in December 1992, the utility opened negotiations for a settlement. Hence, by Order No. PSC-92-1478-PCO-WU, issued December 22, 1992, the hearing was rescheduled, and discovery was postponed until further notice. On January 20, 1993, the utility submitted a Proposed Stipulation. Thereafter, by Order No. PSC-0370-AS-WU, issued March 9, 1993, this Commission approved a Proposed Stipulation submitted by the utility in order to determine whether funds are being used appropriately for utility purposes and to protect the utility's customers from any dissipation of utility assets. On April 15, 1993, the utility submitted a Modification of Stipulation to this Commission for consideration. The purpose of the Modification was to establish the method and priority of distributing the utility's CIAC funds which were to be deposited into an escrow account pursuant to the Stipulation.

This Commission approved the Modification of Stipulation in Order No. PSC-93-0890-FOF-WU, issued June 14, 1993. However, the approval of the Modification was conditioned upon adding the Commission, specifically Mr. Steve Tribble, Director of Records and Reporting, as a signatory to the specified CIAC escrow account within 5 working days of the issuance of the Order, as directed in Paragraph 2 of the stipulation in Order No. PSC-93-0370-AS-WU. The Order also provided that if the condition was not met that the matter would be set directly for hearing. In a letter dated June 21, 1993, the utility notified this Commission of the fact that it could not comply with specific provisions of the Stipulation. Therefore, pursuant to the utility's failure to comply with the

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stipulation as set forth in Order No. PSC-93-0370-AS-WU, this matter is set for administrative hearing.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff (staff) up to and 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

a. 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 days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

b. The hearing in this docket is set for November 1-2, 1993. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by October 25, 1993. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 75, and requests for production of documents, including all subparts, shall be limited to 50, and requests for admissions, including subparts, shall be limited to 50.

Staff served its First Set of Requests to Produce Documents Nos. 1-5 on the utility on November 11, 1992. In addition, Staff served its First Set of Interrogatories Nos. 1-2 on the utility on November 11, 1992. The discovery in this proceeding was held in abeyance during the period provided for in the stipulation pursuant to Order No. PSC-92-1478-PCO-WU. The utility shall respond to these discovery requests no later than 30 days from the date of issuance of this Order.

c. 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 made a part of the evidentiary record 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 period set forth in Section 367.156, Florida Statutes.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Notice and Public Information

Pursuant to Rule 25-22.0405, Florida Administrative Code, the utility shall give written notice of the date, time, location, and purpose of the hearing to each of its customers no less than fourteen days prior to the first day of the hearing. The utility shall utilize first class mail for notices sent to customers with out of town mailing addresses.

The notice shall include a statement that any customer comments regarding the proposed revocation of certificate should be addressed to the Director, Division of Records and Reporting, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0870, and that such comments should identify the docket number assigned to this proceeding.

Prefiled Testimony and Exhibits

The utility and staff prefiled direct testimony on November 9, 1992, and December 12, 1992, respectively, as directed by Order No. PSC-92-0993-PCO-WU, prior to the approval of the Proposed Stipulation. Due to the passage of time and the necessity to supplement the record, it is appropriate to allow the filing of supplemental or additional direct testimony by the utility, any intervenor, and staff as reflected in the schedule herein below.

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 (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered 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 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting by the close of business, which is 4:45 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

The utility and staff filed prehearing statements pursuant to Order No. PSC-92-0993-PCO-WU. However, the prehearing statements may be revised if filed by October 11, 1993, and if in compliance with the following requirements.

Pursuant to Rule 25-22.038(3), Florida Administrative Code, a prehearing statement shall be required of all parties in this docket. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of Records and Reporting by the close of business, which is 4:45 p.m., on the date due. A copy of the prehearing statement shall be served on 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 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 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 used by the party, 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.

Prehearing Conference

A prehearing conference will be held in this docket on October 20, 1993, 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.

Tentative Issues

Attached to this order as Appendix "A" is a list of the issues which were identified in this proceeding by prehearing statements previously filed. Supplemental testimony and revised prehearing statements shall address the issues set forth in Appendix "A".

Controlling Dates

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

- 1) Utility's supplemental or additional testimony and exhibits August 2, 1993
- 2) Intervenors' supplemental or additional testimony and exhibits September 3, 1993
- 3) Staff's supplemental or additional direct testimony and exhibits, if any September 10, 1993
- 4) Rebuttal testimony and exhibits October 6, 1993
- 5) Prehearing Statements (revised, if necessary) October 11, 1993
- 6) Prehearing Conference October 20, 1993
- 7) Hearing November 1-2, 1993
- 8) Briefs December 13, 1993

Use of Confidential Information At Hearing

It is the policy of this 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 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 Division of Records and Reporting's confidential files.

Post-hearing procedures

Rule 25-22.056(3)(a), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. You must include in that statement, a summary of each position of no more than 50 words, marked with an asterisk. In the absence of the summary statement, the prehearing position on that issue will be used in the staff recommendation. The rule also provides that any issue or position not included in the post-hearing statement is considered waived. If a party's position has not changed since the prehearing order was issued, the post-hearing statement can simply restate the prehearing position.

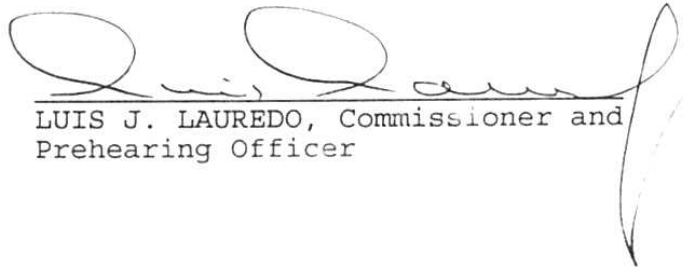
All post-hearing memoranda, including findings of fact, conclusions of law, statement of issues and positions, and briefs, shall total no more than 60 pages, and shall be filed simultaneously. Arguments in briefs must be identified by issue number. Proposed findings of fact and conclusions of law are not required. However, if proposed findings of fact are submitted, each one must cite to the record, identifying transcript page and line. All proposed findings of fact which relate to a particular issue shall be grouped together and shall identify the issue number to which they relate. Each proposed finding of fact shall be separately and consecutively numbered. Any written statement which is not clearly designated as a proposed finding of fact shall be considered to be legal argument rather than a proposed finding of fact.

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Based upon the foregoing, it is

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

By ORDER of Commissioner Luis J. Lauredo, as Prehearing Officer, this 21st day of July, 1993.


LUIS J. LAUREDO, Commissioner and
Prehearing Officer

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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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of

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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.

APPENDIX A

- ISSUE 1: Whether the Commission has the legal and constitutional authority to take the proposed action?
- ISSUE 2: Whether the utility has the technical ability to continue operating as a certificated utility?
- ISSUE 3: Whether the utility has the financial ability to continue operating as a certificated utility?
- ISSUE 4: Whether Certificate No. 302-W, issued to St. George Island Utility Company, Ltd., should be revoked?