

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Objection by ST. JOHNS)	DOCKET NO. 880207-WS
NORTH UTILITY CORPORATION to notice)	ORDER NO. 22879
by GENERAL DEVELOPMENT UTILITIES,)	ISSUED: 5-1-90
INC., of intent to amend)	
Certificates Nos. 451-W and 396-S)	
in St. Johns County and application)	
for amendment.)	

ORDER ESTABLISHING PROCEDURE FOR DETERMINATION OF REASONABLE ATTORNEY'S FEES AND COSTS

General Development Utilities, Inc., (GDU or the Utility) is authorized to provide water and sewer service in St. Johns County by Certificates Nos. 451-W and 396-S. GDU completed the notice requirements for an extension of its service area in St. Johns County, pursuant to Section 367.061, Florida Statutes, on January 27, 1988. GDU also prematurely filed an extension application on February 9, 1988. St. Johns North Utility Corp. (SJN) timely filed an objection to the notice and a request for hearing on February 5, 1988, essentially contending that such extension would result in competition with or duplication of SJN's systems and that SJN was better qualified to serve the disputed area. SJN's request for hearing was granted and the matter went to hearing on September 30, 1988.

Order No. 20668 was issued January 27, 1989, dismissing SJN's objection, granting General Development Utilities, Inc.'s request to amend its Certificates and awarding reasonable attorney's fees and costs to General Development Utilities, Inc. SJN subsequently appealed Order No. 20668. On January 1, 1990, the First District Court of Appeals affirmed Order No. 20688's finding that General Development Utilities, Inc., is entitled to the reasonable attorney's fees and costs associated with this proceeding.

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.

DOCUMENT NUMBER-DATE
03751 MAY-1 1990
PSC-RECORDS/REPORTING

ORDER NO. 22879
DOCKET NO. 880207-WS
PAGE 2

Discovery

Pursuant to Rule 25-22.034, Florida Administrative Code, discovery for this proceeding may be obtained generally in accordance with Rules 1.280 through 1.400, Florida Rules of Civil Procedure. In addition, 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 time in discovery.

Prefiled Affidavits, Testimony, and Exhibits

Pursuant to Rule 25-22.048, Florida Administrative Code, each party shall prefile, in writing, all affidavits and testimony that it intends to sponsor. 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.

GDU shall prefile an original and 12 copies of its direct testimony and exhibits no later than Tuesday, May 15, 1990. SJN shall prefile an original and 12 copies of its affidavits, testimony and exhibits in rebuttal no later than Friday, June 15, 1990.

A copy of all prefiled affidavits, testimony and exhibits shall be mailed to all other parties and Staff no later than the date filed with the Commission.

ORDER NO. 22879
DOCKET NO. 880207-WS
PAGE 3

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 Monday, July 16, 1990. A copy of the prehearing statement shall also be mailed to all other parties and Staff no later than the date that it is filed with the Commission. The failure of a party to timely file a prehearing statement shall constitute 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 and which of the party's witnesses will address the 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

ORDER NO. 22879
DOCKET NO. 880207-WS
PAGE 4

(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 is currently scheduled to be held on Wednesday, August 8, 1990, at 9:30 a.m. in Room 115 of 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. 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 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

ORDER NO. 22879
 DOCKET NO. 880207-WS
 PAGE 5

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.

Controlling Dates

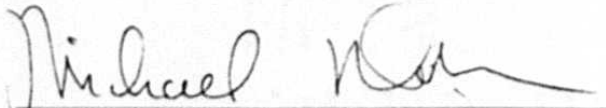
The following dates have been established to govern the key activities of this case.

- 1) General Development Utilities, Inc.'s affidavits, direct testimony and exhibits are due on Tuesday, May 15, 1990.
- 2) St. Johns North Utility Corporation's rebuttal affidavits, testimony and exhibits are due on Friday, June 15, 1990.
- 3) Prehearing Statements are due on Monday, July 16, 1990.
- 4) The Prehearing Conference is to be held at 9:30 a.m., Wednesday, August 8, 1990, in Room 115, Duncan Fletcher Building, Tallahassee.
- 5) The Hearing is to be held at 9:30 a.m., on Wednesday, August 29, 1990, in Tallahassee, Room 122, Duncan Fletcher Building, Tallahassee.

Based upon the foregoing, it is

ORDERED by Commissioner Michael Mck. Wilson, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Michael Mck. Wilson, as Prehearing Officer, this 1st day of MAY, 1990.



MICHAEL MCK. WILSON
 Chairman and
 Prehearing Officer

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