

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Objection by ST. JOHNS NORTH ) DOCKET NO. 880207-WS  
 UTILITY CORPORATION to notice by )  
 GENERAL DEVELOPMENT UTILITIES, INC., ) ORDER NO. 23350  
 of intent to amend Certificates Nos. )  
 451-W and 396-S in St. Johns County ) ISSUED: 8-13-90  
 and application for amendment. )  
 )

Pursuant to notice, a prehearing conference was held on Wednesday, August 8, 1990, before Chairman Michael McK. Wilson, as Prehearing Officer, in Tallahassee, Florida.

APPEARANCES: RICHARD D. MELSON, Esquire, and CHERYL G. STUART, Esquire, Hopping Boyd Green & Sams, Post Office Box 6526, Tallahassee, FL 32314  
On behalf of General Development Utilities, Inc.

SUZANNE F. SUMMERLIN, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863  
On behalf of the Commission Staff.

PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863  
Counsel to the Commission.

PREHEARING ORDERI. Background

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.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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(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 GDU's request to amend its Certificates and awarding reasonable attorney's fees and costs to GDU. SJN subsequently appealed Order No. 20668. On January 1, 1990, the First District Court of Appeals affirmed Order No. 20688's finding that GDU is entitled to reasonable attorney's fees and costs. This proceeding is being held to determine the amount of those reasonable attorney's fees and costs. We have scheduled this matter for administrative hearing on Wednesday, August 29, 1990. A prehearing conference was held August 8, 1990, in Tallahassee, Florida. SJN did not attend the prehearing conference and has filed no testimony nor any prehearing statement.

II. Prefiled Testimony and Exhibits

Testimony of GDU's witnesses has been prefiled. SJN did not prefile testimony. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

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### III. Order of Witnesses

<u>Witness</u>	<u>Appearing for</u>	<u>Issues</u>
<u>Direct</u>		
Richard D. Melson	GDU	All issues
Gregory A. Kisela	GDU	Issues 3,6,7,8
John P. Fons	GDU	Issues 1,2, 6
John R. Marks, III	GDU	Issues 1,2, 6

### IV. Basic Positions

Utility: GDU is entitled to an award of attorneys fees and costs from St. Johns North Utility Corp. (SJN) in the amount of \$67,197.47. This amount consists of a reasonable attorneys fee of \$53,839 and costs of \$11,906.47 in connection with the certification proceeding and a reasonable attorneys fee of \$1,452 (through 5/15/90) in connection with litigation of the amount of attorneys fees. GDU is also entitled to recover interest on the amount of \$65,745.47 from January 27, 1989, the date on which Order No. 20668 awarded recovery of fees and costs against SJN.

SJN: None filed.

Staff: Order No. 20668, issued January 27, 1989, granted an award of reasonable attorneys' fees and costs to General Development Utilities, Inc. Therefore, it is evident that the utility is entitled to some level of attorneys' fees and costs. The specific level cannot be determined until the evidence presented at hearing is analyzed.

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V. Issues and Positions

- 1. ISSUE: What number of hours did counsel for General Development Utilities, Inc., reasonably spend in representation of its client in the proceeding culminating in Order No. 20668, issued January 27, 1989?

POSITIONS

GDU: 462.6 hours.

SJN: No prehearing statement filed.

STAFF: No position at this time.

- 2. ISSUE: What is the reasonable hourly rate for General Development Utilities, Inc.'s counsel for its work in this proceeding?

POSITIONS

GDU: \$116.38, which is a weighted average rate, based on the following billing rates for the individual attorneys involved:

R. Melson	\$140 to 12/31/88
	150 to 1/31/89
C. Stuart	\$ 90 to 5/31/88
	100 to 1/31/89

SJN: No prehearing statement filed.

STAFF: No position at this time.

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3. ISSUE: What is the reasonable amount of costs to which General Development Utilities, Inc., is entitled for this proceeding?

POSITIONS

GDU: \$11,906.47 consisting of the following:

- \$10,245.47 expert witness fees
- 1,507.00 copies filed with PSC
- 154.00 attorney travel for discovery and final hearing

SJN: No prehearing statement filed.

STAFF: No position at this time.

4. ISSUE: Is General Development Utilities, Inc., entitled to interest on any portion of the reasonable attorneys' fees and costs it is awarded in this proceeding? If so, what is the appropriate amount?

POSITIONS

GDU: Yes, prejudgement interest from January 27, 1989, is applicable to the fees and expenses incurred through the entry of the final order.

SJN: No prehearing statement filed.

STAFF: No position at this time.

5. ISSUE: Is General Development Utilities, Inc., entitled to reasonable attorneys' fees and costs for its representation in this attorneys' fees proceeding? If so, what is the appropriate amount?

POSITIONS

GDU: Yes, 8.8 hours through 5/15/90 - to be updated at hearing at these hourly rates:

R. Melson	\$165
C. Stuart	\$120

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SJN: No prehearing statement filed.

STAFF: No position at this time.

- 6. ISSUE: What is the total amount of attorneys' fees, costs and interest to which General Development Utilities, Inc., is entitled?

POSITIONS

GDU: \$67,197.47 plus interest on \$65,745.47 from January 27, 1989, plus all additional fees incurred after 5/15/90 in connection with the litigation of the amount of fees.

SJN: No prehearing statement filed.

STAFF: No position at this time.

VI. Additional Issues Posed By GDU

- 7. ISSUE: What is the amount of attorneys fees actually incurred by GDU in this matter (a) through the entry of the final order and (b) for litigation of the amount of attorneys fees?

POSITIONS

GDU: (a) \$53,839  
(b) \$ 1,452 through 5/15/90 - to be updated at hearing

SJN: No prehearing statement filed.

STAFF: No position at this time.

- 8. ISSUE: Was the payment of these fees contingent on the outcome of the case?

GDU: No.

SJN: No prehearing statement filed.

STAFF: No position at this time.

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9. What is the lodestar amount calculated on the basis of reasonable hours times reasonable hourly rate (a) through entry of the final order and (b) for litigation of the amount of attorneys fees?

GDU: (a) \$53,839  
(b) \$ 1,452 through 5/15/90 - to be updated at hearing

SJN: No prehearing statement filed.

STAFF: No position at this time.

10. Is an adjustment to this lodestar amount appropriate based on the existence of contingencies or based on the results obtained?

GDU: No.

SJN: No prehearing statement filed.

STAFF: No position at this time.

VII. Proposed Stipulations

There are no issues that have been stipulated at this time.

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VIII. Exhibits

<u>Witnesses</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Richard D. Melson	GDU	Official notice	Order No. 20668
		Composite RDM-1	Affidavit regarding attorneys' fees and fee agreement, with attach- ments: -A: Fee agree- ment letters; -B: Summary of billings -C: Copies of bills
Gregory A. Kisela	GDU	GAK-1	Affidavit re: fee agreement and costs incurred by GDU, with attachment: -A: Expert witness invoices
John P. Fons	GDU	JPF-1	Affidavit re: reasonable attorney's fee



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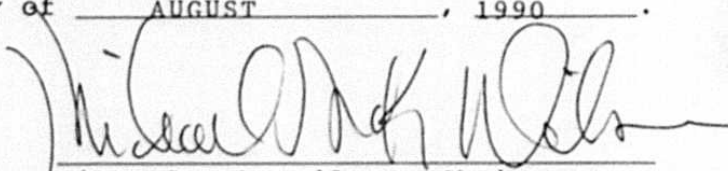
<u>Witnesses</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
John R. Marks, III	GDU	JRM-1	Affidavit re: reasonable attorney's fee

Staff reserves the right to identify exhibits for the purpose of cross-examination.

Based upon the foregoing, it is

ORDERED by Chairman Michael Mck. Wilson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings unless modified by the Commission.

By ORDER of Chairman Michael Mck. Wilson, as Prehearing Officer, this 13th day of AUGUST, 1990.

  
 Michael Mck. Wilson, Chairman  
 and Prehearing Officer

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