BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate increase by GENERAL DEVELOPMENT UTILITIES, INC. (Port Malabar Division) in Brevard County	)	DOCKET NO. 911030-WS
In re: Application for a rate increase by GENERAL DEVELOPMENT UTILITIES, INC. in Charlotte, DeSoto and Sarasota Counties	)	DOCKET NO. 911067-WS
	)	ORDER NO. PSC-92-0326-PCO-WS
	)	ISSUED: 5/11/92

ORDER DENYING CITIES' MOTION FOR OFFICIAL RECOGNITION OF NORTH PORT ARBITRATION TRANSCRIPT AND EXHIBITS

On May 5, 1992, the City of Palm Bay and the City of North Port (Cities), Intervenors in the above-referenced dockets, filed a Motion for Official Recognition of the North Port Arbitration Transcript and Exhibits. The Cities request that the Commission officially recognize the transcript and exhibits in the North Port arbitration, pursuant to Sections 120.57(1)(a)(8) and 120.61, Florida Statutes.

In support of their Motion, the Cities assert that: 1) an agency may take official notice of material or information outside of the proceeding; 2) evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs should be admissible, whether or not such evidence would be admissible in the courts of Florida; 3) the testimony and exhibits identified in the arbitration proceedings are both relevant and material to this instant proceeding; 4) all of the testimony was given under oath; and 5) the Cities reasonably believe that they will be able to use this material to explain or support evidence presented at the rate hearing.

On May 5, 1992, General Development Utilities, Inc. (GDU) filed a response to the Cities' Motion. In its Response, GDU asserts the following: 1) most of the evidence presented in the arbitration proceeding is irrelevant, immaterial and unduly repetitious; 2) none of the categories of documents included within the judicial notice provisions of Sections 90.201 through 90.203, Florida Evidence Code, covers records of arbitration proceedings and thus, the arbitration evidence is beyond the scope of matters allowed under the Florida Evidence Code; 3) the contents of the arbitration record are totally irrelevant to the Port Malabar Division since the arbitration focused solely on the valuation of GDU's West Coast Division; 4) the Cities are attempting to circumvent the Order Establishing Procedure which required the Cities to submit their direct testimony and exhibits by April 10, 1992; and 5) the Cities are requesting the Commission to allow them

to put further testimony in the record at the eleventh hour, giving the parties and utility no meaningful opportunity for cross-examination or rebuttal.

It is true that the Commission may take judicial notice of an order of a court. However, the Commission is not obligated to take judicial notice of testimony presented in another case. We disagree with the Cities' interpretation of De Groot v. Sheffield, 96 So.2d 912 (Fla. 1957). In De Groot, the Court does state that it is "aware of the familiar rule that in administrative proceedings the formalities in the introduction of testimony common to the courts of justice are not strictly employed." Id. at 916. However, the Court goes on further to state that "the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." Id. at 916. Clearly, this is the correct holding of De Groot and it is appropriate in this instance since the arbitration proceeding had a different purpose and perspective from the rate proceeding before this Commission. Official recognition is taken on matters which are not in dispute, for example, an official court order. Further, it is important to note that the Commission does rely on and follow the Florida Evidence Code and the Florida Rules of Civil Procedure in proceedings before it.

The Cities' Motion for Official Recognition of the North Port arbitration transcript is inappropriate for several additional reasons. First, in the arbitration proceedings, only the Cities and GDU could present witnesses and cross-examination. The Office of Public Counsel and Commission Staff could not. Second, the magnitude of the request is inappropriate. The transcripts are lengthy and, undoubtedly, a majority of the evidence in the arbitration proceeding is irrelevant and immaterial. Third, the best evidence in any case is the presentation of live testimony. Finally, the Cities may use specific portions of the arbitration transcripts for purposes of impeachment in the present rate proceeding before the Commission, pursuant to Section 90.608, Florida Statutes. Based on the reasons stated above, the Cities' Motion for Official Recognition of North Port Arbitration Transcript and Exhibits is denied.

Based on the foregoing, it is therefore

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the Motion for Official Recognition of North Port Arbitration Transcript and Exhibits, filed on May 5, 1992, by the Cities of Palm Bay and North Port is hereby denied.

By ORDER of the Florida Public Service Commission, this 11th day of MAY, 1992.

Susan F Clark

SUSAN F. CLARK, 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, is 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 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.