

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Disposition of) DOCKET NO. 930216-WS
Contributions-in-Aid-of-) ORDER NO. PSC-93-1720-PCO-WS
Construction (CIAC) Gross-Up) ISSUED: November 30, 1993
Funds Received by GULF UTILITY)
COMPANY in Lee County.)
_____)

ORDER DENYING UTILITY'S MOTION TO BAR
ADMISSION OF TESTIMONY, REQUIRING
SFCC TO FILE EXHIBIT BY DECEMBER 6, 1993,
AND ALLOWING UTILITY AND STAFF TO
FILE REBUTTAL TESTIMONY BY DECEMBER 16, 1993

By Proposed Agency Action Order No. PSC-93-0871-FOF-WS, issued June 9, 1993, the Commission required Gulf Utility Company (Gulf or utility) to refund excess gross-up collections for the years 1987 through 1990. On June 28, 1993, Southwest Florida Capital Corporation (SFCC) timely filed a protest to Order No. PSC-93-0871-FOF-WS. As a result, this matter has been scheduled for an administrative hearing on January 10-11, 1994.

Order No. PSC-93-1061-FOF-WS, issued July 20, 1993, established the procedure to be followed for this matter, as well as the deadlines for filing testimony and exhibits. On October 20, 1993, Gulf filed a Motion to Bar Admission of Testimony and Exhibits for Failure to Comply With Order Establishing Procedure, wherein it requests an order barring admission of testimony and exhibits of SFCC. SFCC has not responded to this Motion and the time for filing such has expired.

In support of its motion, Gulf states that: 1) Order No. PSC-93-1061-FOF-WS (Order Establishing Procedure) provides that each party prefile in writing all testimony that it intends to sponsor, together with each exhibit intended to support such prefiled testimony; 2) Gulf timely filed its direct testimony and exhibits on August 18, 1993; 3) On September 8, 1993, the date the intervenor's direct testimony was due, SFCC filed a seven-page document entitled "Rebuttal Testimony of David Goldberg"; 4) Such testimony repeatedly makes reference to an exhibit that Mr. Goldberg was "in the process of preparing"; 5) Gulf was unable to prepare any rebuttal testimony, due October 20, 1993, given the absence of the exhibit; and 6) the Order Establishing Procedure states that "failure of a party to timely prefile testimony and exhibits....may bar admission of such exhibits and testimony.

DOCUMENT NUMBER-DATE

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Gulf's motion to bar the admission of the testimony and exhibits has merit. The Order Establishing Procedure clearly informs all of the parties and Staff of the procedure involved in the above-referenced case. SFCC has failed to comply with the procedure outlined in the Order by not filing its completed testimony and the exhibit. SFCC has made it very difficult for the utility and Staff to adequately prepare for the hearing. However, rather than barring the admission of the testimony and exhibit, which would serve no useful purpose in our determination of the issues in this matter, it is more appropriate that SFCC file its exhibit by December 6, 1993. SFCC must meet this deadline because the prehearing conference is currently scheduled to be held on December 16, 1993. Furthermore, the utility and Staff may file any rebuttal testimony specifically pertaining to the exhibit no later than December 16, 1993.

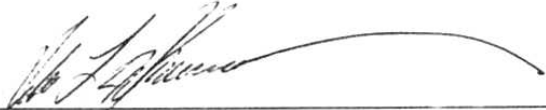
Based on the foregoing, it is therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer that Gulf Utility Company's Motion to Bar Admission of Testimony is denied. It is further

ORDERED that Southwest Florida Capital Corporation shall prefile all exhibits in support of its testimony by December 6, 1993. It is further

ORDERED that Gulf Utility Company and Staff may file any rebuttal testimony specifically pertaining to Southwest Florida Capital Corporation's exhibits no later than December 16, 1993.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 30th day of November, 1993.



JULIA L. JOHNSON, Commissioner and
Prehearing Officer

(S E A L)

LAJ

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 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.