

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in Highlands County by The Woodlands of Lake Placid, L.P.

DOCKET NO. 020010-WS  
ORDER NO. PSC-03-0495-PCO-WS  
ISSUED: April 16, 2003

ORDER FINDING MOTION TO ACCEPT TIMELINESS OF RESPONSE MOOT  
AND RETAINING IMPUTATION OF CIAC AS AN ISSUE FOR HEARING

On December 30, 2002, Highvest Corporation (Highvest) and L.P. Utilities Corporation (L.P.), filed a Petition for Formal Administrative Hearing with regard to Commission Order No. PSC-02-1739-PAA-WS, filed December 9, 2002, in this Docket. On March 25, 2003, Highvest and L.P. filed a Notice of Withdrawal of Issues, withdrawing two issues raised in their protest, the imputation of CIAC and the appropriateness of repression adjustments. On April 3, 2003, the Office of Public Counsel (OPC) filed a Response to Withdrawal of Issues (Response) and a Motion to Accept the Timeliness of Response to Petitioner's Withdrawal of Issues. On April 9, 2003, Highvest and L.P. filed a Reply to OPC's Response.

In its Response, OPC argues that it filed direct testimony on the issue of imputed CIAC, which demonstrates that failure to impute CIAC to the utility would be unfair to the utility's customers. OPC alleges that since this issue was put into controversy by Highvest and L.P., who only sought to withdraw it after seeing OPC's testimony, Highvest and L.P. should not be allowed to withdraw the issue, or in the alternative, OPC should be allowed to add the issue. In their Reply, Highvest and L.P. allege that, as the protesting party, they have an absolute right to a voluntary dismissal of any issue which they raised in the protest.

Pursuant to Rules 28-106.209 and 28-106.211, Florida Administrative Code, the prehearing officer has broad discretion to set the parameters of a case. There is no limit in administrative procedures on the Commission's discretion to address all issues that it determines to be relevant to a full resolution of a case when a PAA order is protested. See Order No. PSC-97-0860-PCO-EI, issued July 16, 1997, in Docket No. 970281-TL; Order No. PSC-03-0159-PCO-SU, issued January 31, 2003, in Docket No. 020413-SU.

DOCUMENT NUMBER-DATE

03493 APR 16 8

FPSC-COMMISSION CLERK

Accordingly, while a party may be able to withdraw issues in some instances, that is not the case here with respect to the CIAC issue. Because the imputation of CIAC to the utility could require a significant adjustment to the rates at issue in this proceeding, the CIAC issue shall remain an issue in this case. Therefore, Highvest and L.P.'s notice to withdraw the CIAC issue is not acknowledged. With this exercise of my authority as Prehearing Officer, OPC's Motion to Accept the Timeliness of Response to Petitioner's Withdrawal of Issues is rendered moot.

On the other hand, the Petitioners' notice to withdraw its repression issue as raised in its original petition is acknowledged.

I note that Highvest and L.P. did not file rebuttal testimony, as allowed by the Order Establishing Procedure. While the choice to file rebuttal testimony is the utility's, I am aware that Highvest and L.P. could have chosen not to file rebuttal testimony on the issue of imputation of CIAC in the expectation that they would seek to withdraw that issue. In an abundance of fairness, I believe that it would be appropriate to allow Highvest and L.P. the opportunity to file rebuttal testimony on this issue, and this issue only, should they so choose.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason as Prehearing Officer, that the Motion for PSC to Accept the Timeliness of Response to Petitioners' Withdrawal of Issues is moot. It is further


ORDERED that the issue of CIAC imputation shall remain in this proceeding. It is further

ORDERED that the withdrawal of the repression issue is hereby acknowledged. It is further

ORDERED that Highvest Corporation and L.P. Utilities Corporation shall have until April 25, 2003 to file rebuttal testimony, solely on the issue of imputation of CIAC.

ORDER NO. PSC-03-0495-PCO-WS  
DOCKET NO. 020010-WS  
PAGE 3

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 16th day of April, 2003.

  
\_\_\_\_\_  
J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

LDH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, Florida Administrative Code; or (2) 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 the Commission Clerk and

ORDER NO. PSC-03-0495-PCO-WS  
DOCKET NO. 020010-WS  
PAGE 4

Administrative Services, 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.