

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

MAY 4, 1999

RE: DOCKET NO. 971179-SU - Disposition of CIAC gross-up funds collected by North Fort Myers Utility, Inc. in Lee County. (Deferred from the 4/20/99 Commission Conference and revised.)

Issue 1: Should the Commission order North Fort Myers Utility, Inc., to show cause, in writing within twenty-one days, why it should not be fined an amount up to \$5,000 for each offense for: 1) its apparent failure to timely request a variance for the continued collection of CIAC gross-up as required by Order No. PSC-96-1180-FOF-WS; 2) its apparent failure to file accurate annual reports for the years 1994, 1995, 1996, and 1997, in compliance with Rule 25-30.110(9), Florida Administrative Code; and 3) its apparent implementation of price-index rate increases based on inaccurate operating costs in violation of Section 367.081(4)(c), Florida Statutes?

Recommendation: A show cause proceeding should not be initiated for the utility's failure to timely request a variance from Order No. PSC-96-1180-FOF-WS. Although the utility has filed inaccurate annual reports for the years 1994, 1995, 1996, and 1997, in apparent violation of Rule 25-30.110, Florida Administrative Code, it should not be made to show cause in writing within 21 days why it should not remit the applicable delinquent penalties as set forth in Rule 25-30.110(7), Florida Administrative Code, through the date of the correction which was February 15, 1999. Consistent with its recommendation in Issue 4, staff believes that refunding over collected amounts with interest serves as sufficient remediation for the incorrect

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

[Handwritten signatures: Susan Clark, Joe Tuccia, J. Tom Lewis]

REMARKS/DISSENTING COMMENTS:

VOTE SHEET
MAY 4, 1999

DOCKET NO. 971179-SU - Disposition of CIAC gross-up funds collected by North Fort Myers Utility, Inc. in Lee County.

(Continued from previous page)

Price Index rate increases and revised annual reports. Staff recommends that the Commission take no further action for the utility having implemented price index rate increases based on inaccurate operating costs in apparent violation of Section 367.081(4), Florida Statutes. Finally, the Commission should strongly admonish the utility to file the most accurate information possible in future annual reports and Price Index applications.

MODIFIED

Company will be required to show cause concerning price indexing.

Issue 2: Should North Ft. Myers Utility's request for a variance from Order No. PSC-96-1180-FOF-WS, be granted?

Recommendation: Yes, North Ft. Myers Utility, Inc.'s request for a variance from Order No. PSC-96-1180-FOF-WS should be granted. If the Commission approves staff's recommendation, NFMU's tariffs for gross-up authority should not be canceled. [†] The utility should file revised tariffs to allow for the continued collection of gross-up taxes on CIAC that is paid in installments from customers that entered into installment contracts prior to June 12, 1996. Once the Utility has collected the entire amount of taxes it is entitled to receive from the customers paying by installment, NFMU should submit canceled tariff sheets to the Commission. Also, ~~the provision allowing customers in Forest Park, Lake Arrowhead, Carriage Village, Lazy Days Village and Tamiami Village the option of paying the system capacity charges in monthly installments over a seven-year period at 10% interest should be removed from the utility's tariff and a revised tariff sheet should be submitted accordingly.~~

Within 30 days of the date of the order,

APPROVED

VOTE SHEET

MAY 4, 1999

DOCKET NO. 971179-SU - Disposition of CIAC gross-up funds collected by North Fort Myers Utility, Inc. in Lee County.

(Continued from previous page)

Issue 3: Should North Ft. Myers Utility, Inc., be required to refund excess gross-up collections for fiscal year 1994 (ended May 31, 1995), fiscal year 1995 (ended May 31, 1996), and fiscal year 1996 (ended May 31, 1997)?

Recommendation: Based on past stipulations, staff recommends that the Commission accept NFMU's request that it be allowed to offset 50% of the legal and accounting fees incurred in processing the refund of CIAC gross-up over collections. If the Commission approves staff's recommendation, the over collection of \$82,287 should be reduced by the offset of \$8,048, for a refund of \$74,239 for fiscal year 1994 (ended May 31, 1995). For fiscal year 1995 (ended May 31, 1996) the over collection of \$61,100 should be reduced by the offset of \$9,101, for a refund of \$51,999. For those contributors who have paid the full amount of the gross-up, the utility should make a cash refund based on the contributors' pro rata share of the \$74,239 and \$51,999 overcharged amounts. The utility should also refund interest accrued from May 31, 1995, and May 31, 1996, to the date of the refund.

For those contributors who are paying by installment, one of two situations may exist: (1) the contributor may not have paid the full amount of gross-up the utility is entitled to collect or (2) the contributor may have paid the full amount of the gross-up the utility is entitled to collect. Therefore, for those contributors who are paying by installment, but have not paid the full amount of gross-up that the utility is entitled to collect for fiscal years 1994 and 1995, the utility should reduce (credit) the principal amount due on their installment contracts by the contributors' pro rata share of the gross-up overcharge for 1994 and 1995, and collect the reduced amount of gross-up from the contributor. Further, for those contributors who are paying by installment, and have paid the full amount of the gross-up that the utility is entitled to collect for fiscal years 1994 and 1995, the utility should make a cash refund of any excess gross-up and associated interest payments, and discontinue gross-up collections from those contributors. In addition, the utility should also refund interest accrued on the excess gross-up and associated interest payments, at the escrow rate, from May 31, 1995, and May 31, 1996, to the date of refund.

The refunds should be completed within 6 months of the effective date of the order. Within 30 days from the date of the refund, the utility should submit copies of canceled checks, credits applied to the monthly bills or other evidence that verifies that the utility has made the refunds. Within 30 days from the date of the refund, the utility should also provide a list

VOTE SHEET
MAY 4, 1999

DOCKET NO. 971179-SU - Disposition of CIAC gross-up funds collected by North Fort Myers Utility, Inc. in Lee County.

(Continued from previous page)

of unclaimed refunds detailing contributor and amount, and an explanation of the efforts made to make the refunds. Further, on October 1, 1996, the utility refunded \$2,753.82 it collected for the period of June 1 through June 12, 1996, and no refund is recommended for the fiscal year 1996 (ended May 31, 1997).

APPROVED

Issue 4: Should North Ft. Myers Utility, Inc., be ordered to refund a portion or the revenues it received as a result of the price indexes that were implemented in 1995, 1996, and 1997?

Recommendation: Yes. The Commission should reject the utility's settlement offer to forgo indexes for the next three years and a portion of the revenues received as a result of implementing the 1995-1997 price indexes should be refunded with interest. As of April 19, 1999, the combined refund for 1995, 1996, and 1997 is approximately \$69,859 before assessment of interest. The refunds should be made with interest as required by Rule 25-30.360 (4), Florida Administrative Code, within 90 days of the effective date of the order. The utility should be required to submit the proper refund reports pursuant to Rule 25-30.360(7), Florida Administrative Code. The refund should be made to customers of record as of the date of the Order pursuant to Rule 25-30.360(3), Florida Administrative Code. The utility should treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), Florida Administrative Code. Further, the utility should be ordered to lower its rates to reflect the 1.15% price index rate adjustment calculated by staff.

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VOTE SHEET
MAY 4, 1999

DOCKET NO. 971179-SU - Disposition of CIAC gross-up funds collected by North Fort Myers Utility, Inc. in Lee County.

(Continued from previous page)

Issue 5: Should the docket be closed?

Recommendation: No. Upon expiration of the protest period, the docket should remain open pending verification of the CIAC gross-up and 1995, 1996, and 1997 price index refunds. Regardless of how North Fort Myers Utility, Inc., responds to the show cause portion of the Order, this docket should remain open pending the processing of the refunds of the improperly implemented price indexes and the over collected CIAC gross-up funds. If the utility remits the penalties for its failure to timely file accurate annual reports for the years 1994-1997, and makes the refunds for the improperly implemented price indexes and over collection of CIAC gross-up, and there are no unclaimed refunds, staff should have administrative authority to close the docket. If the utility fails to timely respond to the portion of the show cause order relating to the timely filing of accurate annual reports, the penalties set forth in the show cause order shall be liens on the real and personal property of the utility, enforceable by the Commission as statutory liens under Chapter 85, and Section 55.10, Florida Statutes, respectively. If the utility responds to the show cause order and requests a hearing, or there is a timely protest by a substantially affected person of the proposed agency action portion of this Order, this docket should remain open for final disposition.

APPROVED