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ROBERT M. C. ROSE  
OF COUNSEL

January 10, 2000

VIA FACSIMILE AND U.S. MAIL

Steve Reilly, Esquire  
Office Of Public Counsel  
111 West Madison Street  
Suite 812  
Tallahassee, FL 32301-1906

Re: North Fort Myers Utility, Inc.; PSC Docket No. 971179-SU  
Disposition of Gross-up Funds  
Our File No. 16319.29

Dear Steve:

I apologize for the delay in getting back to you on this issue. I have tried to outline below an updated proposal for settlement of the above-referenced case, based in part upon our previous offer for settlement and one substantial additional concession. I am attaching a copy of our settlement proposal as sent to the Commission staff in October of 1998. Under that proposal we agreed to refund \$124,000 in CIAC gross-up along with promises not to implement indexes for several years. A very similar refund was proposed in the Commission's May, 1999 PAA Order (\$126,238).

The Utility has incurred over \$82,461 in costs related to processing this gross-up case that were not included in the calculation of the refund in the Commission's PAA Order. That Order only included 50% of accounting costs through October of 1997 and 50% of legal costs through November of 1997. As a result of an oversight, the staff did not include any additional costs from that date to the date the Order was issued one year and a half later. Even if the Commission only allowed inclusion of 50% of those additional costs up through November of 1999, the refund as proposed by the PSC Order would be reduced to \$85,007 presently. As noted previously in our Testimony and discussed further below, it is our intention to seek full recovery of all such costs, if

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we are required to go to hearing under that scenario, the refund as proposed in the Commission's PAA Order is already reduced to \$43,777 at present and growing smaller daily.

However, in a further attempt to settle this case, we will propose that the settlement agreement from October of 1998 (which included foregoing indexes for a three year period), with an additional offer of increasing the gross-up refund to \$150,000 (an addition of \$25,000 or 20%) to be distributed prorata to the contributors of gross-up in the same manner as outlined in our October 2, 1999 letter to Ralph Jaeger (attached). Otherwise, our proposal would be the same as outlined in that letter to Mr. Jaeger. In doing so, we are not requesting any recognition of the additional actual costs already incurred by the Utility, much less those that will be incurred if this matter has to go to full hearing as outlined above.

To the extent we are unable to reach a settlement based upon our new proposal as outlined above, we will not only seek recovery of ½ of those costs incurred in this proceeding, but in fact will seek recovery of all such costs incurred, not only because we have always contended that we are entitled to reduce any gross-up refund by any gross-up related costs, but also because much of such costs are costs incurred as a result of protests by persons other than the Utility. This total is increasing daily and will be substantially higher if a hearing is required.

One of the issues which you and your client have maintained throughout this proceeding is a desire to have special treatment given to those persons paying gross-up through installment payments. We believe that any special treatment of those individuals is not only discriminatory and unfair to those persons who paid gross-up monies in advance, but is contrary to every tax professionals' conclusion as to appropriate treatment of those installment payments as gross-up at the time that the installment arrangements began. We maintain that position, as does every tax professional who we have consulted on the issue.

Please provide us with your response as soon as possible, so that we can see whether we can finalize this case in short order or whether we need to move forward with preparation of our Rebuttal Testimony. We have extensive discovery due to Public Counsel and the staff on approximately January 24, 2000. To the extent we are unable to finalize this case through settlement before we spend substantial time in responding to that discovery, any future discussion of settlement will have to include, at a minimum, such additional costs. To the extent this case is drawn out such that we are required to begin preparation of the extensive time necessary to prepare Rebuttal Testimony, this offer will be withdrawn. Therefore, time is of the essence in receiving your response.

Because I will be out of town from January 14<sup>th</sup> until the 24<sup>th</sup>, I would like to if at all possible, have you review the above proposal and offer your reaction by Wednesday of this week. Otherwise, we need to arrange a meeting, either in person or by phone, for the morning of the 24<sup>th</sup> in order to

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avoid providing the additional discovery (and therefore incurring additional expense for which we will seek offset) if at all possible. Please let me know what accommodations you can grant me in this regard as soon as possible.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



F. Marshall Deterding  
For The Firm

FMD/tmg

cc: Blanca Bayo, Director (via hand delivery 1/10/00 noon)  
Ralph Jaeger, Esquire (via hand delivery 1/10/00 noon)  
Connie L. McCaskill, CPA (via hand delivery 1/10/00 noon)  
Mr. Tony Reeves  
Robert C. Nixon, CPA

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