

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Authority)
to Transfer the Facilities of)
MHC SYSTEMS, INC. and)
Certificate Nos. 353-W and 309-S)
in Lee County, Florida to)
NORTH FORT MYERS UTILITY, INC.)
_____)

Docket No. 000277

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REGISTRATION AND REPORTING

NORTH FORT MYERS UTILITY, INC.'S
MOTION TO STRIKE

NORTH FORT MYERS UTILITY, INC. ("NFMU"), by and through its undersigned attorneys and pursuant to Rule 28-106.204, Florida Administrative Code, files this Motion to Strike Mr. Varga's response to NFMU's Motion for Summary Final Order and in support thereof states:

1. On October 24, 2000, NFMU filed and served upon the parties a Motion for Summary Final Order.

2. Pursuant to Rules 28-106.204(1) and 25-106.103, Florida Administrative Code, within 12 days after service of NFMU's Motion, a party may file a response in opposition. In this case, written responses were required to be filed by Monday, November 6, 2000.

3. Filing means "received by the office of the agency clerk during normal business hours". Rule 28-106.104, Florida Administrative Code.

4. Mr. Varga's response was filed on November 8, 2000, two day late.¹

¹NFMU's attorney did receive a copy of the response by e-mail which was dated Saturday, November 4, 2000.

APP _____
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5. This is not the first time that Mr. Varga has ignored procedural rules. His initial objection was filed 42 days late (he had e-mailed a timely objection to the Staff); however, the Commission accepted his untimely objection under the doctrine of equitable tolling concluding that Mr. Varga in good faith thought his e-mail would serve as an objection. Mr. Varga cannot make that argument with regard to his most recent filing since it was made clear to him that the Commission had no rules to allow for filings by e-mail.

6. Striking Mr. Varga's response is not unprecedented. See *In re: Investigation of utility rates of Aloha Utilities, Inc.*, Order No. PSC-99-1233-PCO-WS (June 22, 1999), *In Re: Complaint of Mother's Kitchen against Florida Public Utilities Company*, Order No. PSC-98-1254-FOF-GU (September 22, 1998). This latter case is similar in that the offending party was not represented by an attorney.

WHEREFORE, NFMU moves this Commission for an Order striking Mr. Varga's response to its Motion for Summary Final Order.

Respectfully submitted on this
10th day of November, 2000, by:

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By 
MARTIN S. FRIEDMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Strike forwarded via U.S. Mail this 10th day of November, 2000 to:


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