

**ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Objection to notice of)
application of Betmar Utilities,)
Inc. for amendment of Certificates)
Nos. 137-W and 98-S in Pasco County))

DOCKET NO. 891280-WS

BETMAR UTILITIES, INC.,)
)
Petitioner,)
)
vs.)
)
CITY OF ZEPHYRHILLS,)
)
Respondent,)
)
and)
)
FLORIDA PUBLIC SERVICE COMMISSION,)
)
Intervenor.)

DOAH CASE NO. 91-1159

INTERVENOR FLORIDA PUBLIC SERVICE COMMISSION'S
EXCEPTIONS TO HEARING OFFICER'S RECOMMENDED ORDER

Pursuant to Section 120.57(1)(b)4, Florida Statutes, and Rule 28-5.404, Florida Administrative Code, Intervenor, Florida Public Service Commission, (Commission) by and through its Staff hereby files its exceptions to the hearing officer's recommended order filed with this agency on July 16, 1991.

I. Exception to Hearing Officer's Findings of Fact.

In her recommended order, the hearing officer failed to find that Betmar Utilities, Inc., (Betmar) was a wastewater collection system only. The hearing officer rejected Betmar's proposed

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finding of fact stating this with the explanation that the finding contained an "improper legal conclusion." The evidence in the record showing that Betmar provides collection services, not treatment services, is unrebutted in the record. See, for example, transcript at pages 18 and 32. Thus, to the extent that the hearing officer failed to find Betmar provided only collection services, her findings of fact were not based on competent substantial evidence.

II. Exception to Hearing Officer's Conclusion of Law.

The hearing officer erred in concluding that Betmar was not entitled to amend its certificated territory because it failed to comply with Rule 25-30.036(d), Florida Administrative Code.

The hearing officer noted that Rule 25-30.036(d), Florida Administrative Code, requires each utility seeking to extend its service area to provide "evidence that [it] owns the land upon which the utility treatment facilities that will serve the proposed territory are located or a copy of an agreement, such as a 99-year lease, which provides for the continued use of the land." The hearing officer failed to expressly find that Betmar has wastewater collection facilities only, and no wastewater treatment facilities. She concludes that because Betmar has only a twenty-five year bulk wastewater service agreement with Pasco County, Betmar has failed to comply with Rule 25-30.036(d), Florida Administrative Code. Therefore, the hearing officer recommends, the Commission should reject the amendment application.

This conclusion of law must be rejected as it is a misinterpretation of Rule 25-30.036(d), Florida Administrative Code. That rule is intended to be applied to utilities which own treatment facilities. As Betmar does not own any treatment facilities--it uses the treatment facilities of Pasco County--the rule would not be applied to Betmar. Since Betmar does not own treatment facilities, it cannot own the land upon which said facilities are located. In sum, the hearing officer erroneously applied this rule to Betmar.

III. Conclusion

The hearing officer failed to find that Betmar provides wastewater collection services only. In addition, the hearing officer made an erroneous legal conclusion by applying Rule 25-30.036(d), Florida Administrative Code, to Betmar. Because the hearing officer relied upon the aforementioned errors in concluding

that Betmar's amendment application should be denied, the Florida Public Service Commission, by and through its Staff, asserts that the hearing officer's ultimate conclusion is in error.

Wherefore, Intervenor requests that the Florida Public Service Commission enter a final order adopting the above exceptions to the hearing officer's recommended order and grant Betmar the requested amendment.

Respectfully submitted on this 5th day of August,
1991, by:



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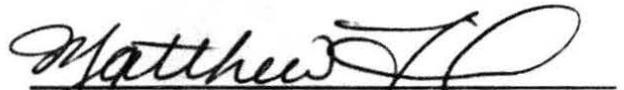
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Intervenor Florida Public Service Commission's Exceptions to Hearing Officer's Recommended Order was furnished by regular U.S. Mail to the following individuals at the addresses indicated, this 5th day of August, 1991:

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