

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 921206-WU  
certificate to provide water ) ORDER NO. PSC-94-1069-FOF-WU  
service in Pasco County by GEM ) ISSUED: August 30, 1994  
ESTATES UTILITIES, INC. )  
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The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK  
DIANE K. KIESLING

ORDER GRANTING MOTION TO DISMISS

BY THE COMMISSION:

Gem Estates Utilities, Inc. (Gem) is a Class C utility which provides water service to a mobile home subdivision in Pasco County. Gem has been operating as a utility, without Commission approval, for approximately twenty years. The Commission first became aware of Gem pursuant to a customer complaint regarding Gem Estates Mobile Home Subdivision's intent to raise its maintenance fee. Water service was, at that time, included in the maintenance fee.

On November 20, 1992, Gem filed an application for a certificate as an existing utility charging for service. On May 2, 1993, Gem served notice of its application by U.S. Mail. On May 20, 27, and June 3, 1993, Gem published notice of its application in the Zephyrhills News. On May 7, 1993, a number of Gem's customers filed objections to Gem's application. Accordingly, this matter was set for an administrative hearing, which was scheduled to be held on September 2, 1994.

By Order No. PSC-93-1736-PCO-WU, issued December 3, 1993, as modified by PSC-94-0196-PCO-WU, issued February 15, 1994, the Prehearing Officer established procedures to be followed in this proceeding. According to the case schedule thereby established, the objectors' prefiled testimony was to be filed on or before June 20, 1994. Prehearing statements of all parties and the Staff of this Commission were due to be filed on or before August 1, 1994.

On March 14, 1994, Gem filed a motion to dismiss the objections. The gist of Gem's motion was that the objectors failed to abide by Rule 25-22.036, Florida Administrative Code, which sets

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forth minimum requirements for pleadings which initiate formal proceedings.

On March 24, 1994, the objectors filed a response to Gem's motion to dismiss, along with an amended objection. On May 2, 1994, John R. Council, Esquire, filed a notice of appearance on behalf of the objectors. In their amended objection, the objectors questioned the financial and technical ability of Gem to provide quality water service. They also raised certain health and safety concerns and suggested that they would be better served by the City of Zephyrhills. The objectors, therefore, argued that it would not be in the public interest to grant Gem's application for a certificate.

Since the objectors raised material issues of fact in their amended petition, by Order No. PSC-94-0838-FOF-WU, issued July 11, 1994, the Commission denied Gem's motion as moot.

The objectors failed to file prefiled testimony on or before June 20, 1994. The objectors further failed to file a prehearing statement on or before August 1, 1994.

On August 3, 1994, Gem filed a second motion to dismiss. In its motion to dismiss, Gem points out that the Order Establishing Procedure for this case contains the following statement:

Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position.

Order No. PSC-93-1736-PCO-WU, at page 3. See, also, Rule 25-22.038(3), Florida Administrative Code.

Gem also notes that the prehearing statements of Gem and Staff raise only two issues: whether the Commission should issue a certificate, and what are the appropriate rates and charges? Gem next argues that the issues raised in the amended objection are not included among these issues and that the objectors have, in accordance with Order No. PSC-93-1736-PCO-WU, waived their issues as well as any right to present testimony in support of their position(s).

Notwithstanding the above, Gem also notes that, with regard to the objectors' quality of service concerns, the uncontroverted testimony of both Gem's witnesses and the Department of

Environmental Protection witness sponsored by Staff do not sustain their concerns. As for the objectors' preference that they be served by the City of Zephyrhills, Gem points out that it has, at the suggestion of Staff, engaged in discussions with the City and was informed that the City was not interested in purchasing the utility system.

The objectors did not file a response to Gem's motion to dismiss.

A party's exercise of legal rights necessarily invokes certain attendant obligations, including complying with the requirements of the forum. The objectors have failed to comply with the requirements of Order No. PSC-93-1736-PCO-WU and Rule 25-22.038(3), Florida Administrative Code. Although this Commission generally grants a certain degree of leeway to unrepresented customer objectors, we note that these objectors have been represented by counsel since May 2, 1994. This was prior to both their testimony due date and the prehearing statement due date. Accordingly, pursuant to Order No. PSC-93-1736-PCO-WU and Rule 25-22.038(3), Florida Administrative Code, Gem's motion to dismiss is granted.

It is, therefore,

ORDERED by the Florida Public Service Commission that the motion to dismiss filed by Gem Estates Utilities, Inc. is granted. It is further

ORDERED that the prehearing conference, scheduled for August 17, 1994, and the hearing, scheduled for September 2, 1994, are cancelled.

By ORDER of the Florida Public Service Commission, this 30th day of August, 1994.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kary Fejan  
Chief, Bureau of Records

( S E A L )

RJP

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.