

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 930892-WU
amendment of Certificate No.) ORDER NO. PSC-96-0174-FOF-WU
488-W in Marion County by) ISSUED: February 7, 1996
VENTURE ASSOCIATES UTILITIES)
CORP.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER DENYING MOTION TO STRIKE

BY THE COMMISSION:

BACKGROUND

Venture Associates Utilities Corp. (Venture, VAUC or utility) is a developer-owned class B water utility which presently provides service to the Palm Cay subdivision within Marion County. On September 9, 1993, Venture filed its application to amend its existing water certificate to include additional territory to provide service to the Ocala Palms Subdivision. This property, as well as the existing Palm Cay property, is being developed by Venture Associates, an affiliated company. Within the additional territory, Venture proposes to serve an additional 798 equivalent residential connections (ERCs) consisting of single family homes and townhouses as well as a club house and community center. Venture proposes to provide only water service. Wastewater service will be provided to individual customers directly by the City of Ocala.

Venture provides service to its Palm Cay system through an on-site water treatment plant. To provide service to the Ocala Palms Subdivision, Venture will purchase water from the City of Ocala through a master meter and resell to the individual water users within the development.

By Order No. PSC-94-1621-FOF-WU, issued December 30, 1994, this Commission, by final action, amended Venture's certificate to include the additional territory (Ocala Palms Subdivision) and by proposed agency action (PAA), approved rates and charges for the Ocala Palms Subdivision. On January 20, 1995, six customers timely

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filed protests to Order No. PSC-94-1621-FOF-WU. On the same date, the utility timely filed a protest to the Order. Accordingly, this matter was scheduled for an administrative hearing. On March 24, 1995, Venture filed a Motion for Interim Rates. The basis for this request was that the utility is presently providing service, without compensation, to 90 homes and would like to recover costs pending finalization of this docket scheduled for June of 1996. By Order No. PSC-95-0624-FOF-WU, issued May 22, 1995, we denied Venture's motion but granted Venture's PAA rates and charges as temporary rates, subject to refund.

Rule 25-22.038(3), Florida Administrative Code, requires parties to file a prehearing statement on the date provided in the Order Establishing Procedure. Failure of a party to file the prehearing statement on the required date shall be a waiver of any issue not raised by other parties or by the Commission, as well as the ability to present testimony in favor of his or her position. Pursuant to Order No. PSC-95-0323-PCO-WU (Order Establishing Procedure), issued on March 9, 1995, prehearing statements were due to be filed on December 11, 1995. Citizens' Prehearing Statement was filed by the Office of Public Counsel (OPC) on that date.

On December 15, 1995, Venture filed a motion to strike OPC's prehearing statement. On December 18, 1995, a prehearing conference was held. The Prehearing Officer deferred ruling on Venture's motion, in order that the motion be disposed of by the entire Commission. At the prehearing conference, OPC orally noticed its intervention on behalf of the citizens of the state of Florida. The Prehearing Officer acknowledged OPC's intervention on that date.

MOTION TO STRIKE

Rule 25-22.038(3), Florida Administrative Code, requires parties to file a prehearing statement on the date provided in the Order Establishing Procedure. Failure of a party to file the prehearing statement on the required date shall be a waiver of any issue not raised by other parties or by the Commission, as well as the ability to present testimony in favor of his or her position. Additionally, the Order Establishing Procedure required that prehearing statements be filed by December 11, 1995. On that date, OPC filed a Citizens' Prehearing Statement, which states that "[t]he citizen-petitioners (petitioners) file this Prehearing Statement...." The witnesses listed in that prehearing statement included Walter H. Hallberg and Charles L. Lobdell, both of whom were among the customers who filed a Petition on PAA in this docket.

On December 15, 1995, Venture filed a motion to strike OPC's prehearing statement. As grounds therefore, Venture states the following:

1. On December 11, 1995, OPC filed a prehearing statement, although it had not sought intervenor status. Only a party can file a prehearing statement, and OPC was not a party when it filed its prehearing statement.

2. Rule 25-22.039, Florida Administrative Code, provides that intervenors take the case as they find it. Since OPC was not a party on December 11, 1995, it was not authorized to file a prehearing statement.

3. Both the Order Establishing Procedure and Rule 25-22.038(3), Florida Administrative Code, provide that only those issues raised in the prehearing statements of Venture and the Commission staff shall be before the Commission in this proceeding as all other issues are waived. In addition, no testimony in support of a position on an issue not raised by the Commission staff's prehearing statement or Venture's prehearing statement may be presented.

4. OPC's prehearing statement is a nullity since it was filed by a non-party. Should OPC be granted intervenor status, its prehearing statement should be stricken as untimely and not in compliance with the Order Establishing Procedure.

We find that OPC was not a party when it filed a prehearing statement in this docket. We find, however, that in order to make a proper ruling on Venture's motion we must determine whether OPC filed the prehearing statement as a party representing the citizens of the state of Florida or merely as legal counsel on behalf of Venture's customers who filed the Petition on PAA. We find that OPC acted as legal counsel and attempted to aide the customers in filing their prehearing statement. As stated earlier, the prehearing statement states, "[t]he **citizen-petitioners (petitioners)** file this Prehearing Statement...." (Emphasis added.) The witnesses listed in the prehearing statement include Messrs. Hallberg and Lobdell, both of whom are among the customers who filed the Petition on PAA.

Furthermore, on December 14, 1995, pursuant to notice being served to the parties, our staff conducted an informal pre-hearing in which parties reviewed and attempted to narrow the issues to be discussed at the prehearing conference. Among those present were Venture's counsel and an attorney from OPC. At that

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meeting, counsel from OPC conceded that OPC was not a party in this docket as of that date. He did state, however, that OPC was acting as legal representative for the Venture customers who filed the Petition on PAA.

Therefore, we find that the prehearing statement in question is actually that of the customers, filed on their behalf by OPC. We find it appropriate to deny Venture's motion to strike, as the customers timely filed a prehearing statement in compliance with the Order Establishing Procedure and Rule 25-22.038(3), Florida Administrative Code. As for OPC, it did not file a prehearing statement and in accordance with Rule 25-22.039, the citizens take the case as they find it as of December 18, 1995.

We note that this is an unusual situation in that usually when OPC intervenes, it is on behalf of all of the customers. When individual customers protest a PAA Order without representation of counsel, OPC often provides advisory assistance to them.

This docket shall remain open pending the final resolution of the docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Venture Associates Utilities Corp.'s Motion to Strike, is hereby denied. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 7th day of February, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Dejeu
Chief, Bureau of Records

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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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.