

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by CITY of)	DOCKET NO. 900341-WS
MOUNT DORA to delete)	ORDER NO. 23500
territory from JJ's MOBILE)	ISSUED: 9-17-90
HOMES, INC.'s Certificates)	
Nos. 298-W and 248-S in)	
Lake County.)	
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

NOTICE OF PROPOSED AGENCY ACTIONORDER DENYING COMPLAINT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature, and as such, will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On April 26, 1990, the City of Mount Dora, Florida (City) filed a "Petition to Delete Territory from Certificate of Authority." The petition asked us to exercise our jurisdiction to either revoke or delete territory from the water and wastewater certificates issued to JJ's Mobile Homes, Inc. d/b/a/ The Dora Pines Mobile Home Park Estates (JJ's Mobile Homes). On May 9, 1990, we notified JJ's Mobile Homes that a complaint had been filed against it by the City. On May 31, 1990, JJ's Mobile Homes filed a response to the City's complaint.

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PSC-RECORDS/REPORTING

ORDER NO. 23500
DOCKET NO. 900341-WS
PAGE 2

JJ's Mobile Homes is a Class C utility providing water and wastewater services to approximately 138 customers in Lake County, Florida. It was issued Certificates Nos. 298-W and 248-S on March 5, 1981. During 1989, the City annexed a tract of property, portions of which are located within JJ's Mobile Homes' service area. The annexed property is the site for a proposed housing development that is to consist of a single-family subdivision with 780 units, a clubhouse and an 18-hole golf course.

On September 8, 1989, JJ's Mobile Homes filed a complaint against the City in the Circuit Court for the Fifth Judicial Circuit in and for Lake County (JJ's Mobile Homes, Inc. vs City of Mount Dora, Florida, Case No. 89-1857-CA-01). The complaint sought a declaratory judgment that JJ's Mobile Homes has the exclusive right to provide water and wastewater services within its certificated service area. The City filed an Answer and Affirmative Defenses to the Complaint on November 6, 1989. The City denied that JJ's Mobile Homes has the exclusive right to provide service to the property in question. As affirmative defenses, the City stated that it is not subject to our regulation or the provisions of Chapter 367, Florida Statutes; that the certificates issued to JJ's Mobile Homes do not grant it exclusive rights within its service area; and that JJ's Mobile Homes is unable to provide the water and wastewater services that will be required by the new development.

On March 2, 1990, a hearing was held on JJ's Mobile Homes' Motion for Summary Judgment and the City's Motion for Summary Judgment. On April 10, 1990, a Summary Final Judgment was entered in the circuit court proceeding. This final order decided all the issues raised in the litigation. The court found the facts supporting JJ's Mobile Homes' ability to provide service within its certificated area, including the annexed territory, to be uncontroverted. The court order declared that JJ's Mobile Homes has the exclusive right to provide water and wastewater service within its certificated area. Accordingly, it held that the City could not extend its utility lines into any part of JJ's Mobile Homes' service area.

JURISDICTION

We find that we have jurisdiction to consider the complaint filed against JJ' Mobile Homes. JJ's Mobile Homes is a water and wastewater utility subject to our regulation. It has held certificates of authorization issued by us since March 5, 1981.

ORDER NO. 23500
DOCKET NO. 900341-WS
PAGE 3

It is true that we lack jurisdiction to authorize or prohibit the actions of a utility controlled by a governmental authority. Section 367.022(2), Florida Statutes. Southern Gulf Utilities v. Mason, 166 So. 2d 138 (Fla. 1964); Order No. 18525, issued December 9, 1987. Here, however, the City seeks to have us exercise our jurisdiction over a regulated utility. Our exercise of jurisdiction here will determine the utility's continued grant of authority to provide service within its certificated area. However, it will not have the effect of attempting to control the actions or rights of the City. Thus, the facts here are distinguishable from those cases in which we have been asked to either approve or disapprove the actions of a governmental authority and have declined to do so. Therefore, we find it appropriate to accept jurisdiction of this controversy.

ABILITY TO PROVIDE SERVICE

Based upon our review of the court order discussed above, we believe that the order supports a finding that JJ's Mobile Homes has the ability to provide adequate service within its certificated area. Additionally, we have conducted an investigation concerning JJ's Mobile Homes' ability to provide adequate service. We conclude from this investigation that JJ's Mobile Homes appears able to provide adequate utility services in its certificated area.

The trial court proceeding between the City and JJ's Mobile Homes resulted in a decision that JJ's Mobile Homes has the present ability to provide water and wastewater service within its certificated area and that its water and wastewater systems were designed and constructed for the purpose of providing service to the entire certificated area. The court found that JJ's Mobile Homes has the capacity to expand its wastewater plant to treat up to 295,000 gallons per day. JJ's Mobile Homes is currently operating its water and wastewater utility in its service area and its lines extend to a point that is immediately adjacent to the annexed property. Thus, JJ's Mobile Homes' water and wastewater lines are much closer to the annexed property than are those of the City. The court held the facts discussed above to be uncontroverted.

Following the filing of the City's complaint with us, we conducted an investigation to determine if JJ's Mobile Homes has the capacity to provide utility services within its service area. Annual reports furnished by the utility were reviewed and

ORDER NO. 23500
DOCKET NO. 900341-WS
PAGE 4

a site visit was conducted during June, 1990, to assess the capacity of the utility and its ability to serve the additional territory consisting of approximately 780 connections. An inquiry was made to the district office of the Florida Department of Environmental Regulation (DER) concerning the utility's capacity and its compliance with regulatory requirements.

JJ's Mobile Homes' potable water system has a rated capacity of 600 gallons per minute (GPM) which equates to 864,000 gallons per day (GPD). The capacity is furnished by a single well, pumps, a hydropneumatic storage tank and various valve and control systems along with automatic gas chlorination. At a standard capacity rating of 350 GPD per equivalent residential connection (ERC), the system is capable of serving approximately 2,469 ERCs. The current connected load consists of 136 residential (mobile home) connections and a club house, a pool and an irrigation system for the entrance boulevard. The service area is influenced by seasonality since most of the customers have another residence in which they reside for a portion of the year. A review of the monthly operating reports (MORs) submitted by the utility to DER indicates that average daily flows (ADFs) have been a high of 31,000 GPD to a low of 8,700 GPD for the past year (March 1989 - March 1990). Such flows, assuming an overall average of approximately 17,000 GPD equates to serving 50 ERCs at 350 GPD/ERC. The capacity at planned build out of 207 connections in the current service area plus the additional 780 connections in the new development would equate to 345,450 GPD at 350 GPD/ERC. The requirement for fire flow protection could be up to 360,000 GPD based upon 1500 GPM for 4 hours. It is more likely that the fire flow protection would be 500 GPM for 2 hours since only residential service is contemplated. That would result in fire flow capacity of 60,000 GPD. Thus, only approximately 400,000 GPD would be required of a system that is rated at more than twice the required capacity.

JJ's Mobile Homes has begun plans for the addition of a second well and an emergency source of pumping power in the event that it becomes required by DER. We reviewed the plans and found them to be complete and reasonable. Based upon the analysis just discussed, it seems that the utility possesses sufficient capacity in its potable water system to accommodate the anticipated development consisting of approximately 780 connections without bringing about any adverse impact on its current customer base.

ORDER NO. 23500
DOCKET NO. 900341-WS
PAGE 5

The wastewater system has a rated capacity of 95,000 GPD which equates to approximately 340 ERCs at a standard rate of 280 GPD/ERC. The current plant flow is approximately 14,000 GPD which is equivalent to about 50 ERCs at 280 GPD/ERC. During the past year (March 1989 - March 1990), a review of the MORs indicates ADFs of as high as 19,000 GPD and as low as 10,500 GPD. Again, seasonality plays a large role in the diversity of plant flows during various times of the calendar year. The current connected load of 136 residential (mobile home) customers produces an average flow of approximately 14,000 GPD and leaves nearly 80% of the plant's capacity as excess.

The utility's plans for expansion of the wastewater treatment facility to a capacity of 295,000 GPD were also reviewed. The expansion will utilize the current plant and will increase capacity utilizing a similar treatment scheme as that presently used. The expanded capacity to 295,000 GPD equates to 1,054 ERCs at a standard rate of 280 GPD/ERC. The proposed 780 connections for the new development and the build out of 207 connections in the present service area will result in 987 connections to the system or 276,360 GPD. The connected load at build out amounts to about 94% of the rated capacity. The utility will have to exercise meticulous care in keeping infiltration to a minimum in order not to exceed design limits when the heavy use season occurs. However, a system utilizing 94% of its capacity when built out is not an unusual situation and is, in effect, an efficient use of resources as long as limits are not exceeded. Based upon the analysis just discussed, the wastewater system appears currently to have considerable excess capacity and plans are in place to accommodate expansion requirements for future development.

The interconnection point between the utility's system and the infrastructure of the development's distribution and collection system appears to be at the property line between the utility's plants and the development itself. The utility's connection point appears to be considerably closer to the development than those of the City.

Based upon the discussion above of the capabilities of the potable water and wastewater systems of the utility, we find that JJ's Mobile Homes, Inc. possesses sufficient capacity to serve its current customer base and appears capable of the expansion necessary to provide service to the planned development encompassing approximately 780 additional connections.

ORDER NO. 23500
DOCKET NO. 900341-WS
PAGE 6

The City's complaint alleges that JJ's Mobile Homes has a history of environmental and operational problems. As part of the investigation of JJ's Mobile Homes, our staff requested information from the Central District office of DER concerning the utility. In a letter dated June 27, 1990, the district's Program Administrator for Water Facilities responded that the utility appeared to be in compliance with environmental regulations and that it had no capacity problems of which the agency was aware. Thus, although the City presented some evidence of JJ's Mobile Homes' prior environmental and operational deficiencies, the recent information received from DER does not indicate that any current problems exist.

Both the circuit court decision and our investigation indicate that JJ's Mobile Homes is providing adequate utility services and that it appears able to expand its capacity to provide service to the development planned within its service area. Upon consideration of the facts discussed above, we find that JJ's Mobile Homes is able to provide adequate utility services within its certificated area.

Although the City raises it as an issue, we believe that the question of its ability to provide utility services is not relevant to the question of JJ's Mobile Homes' ability to adequately provide service. Absent a finding that a utility is incapable of adequately providing services, we need not evaluate the claim that a competing entity could provide superior services. Therefore, we decline consideration of the City's ability to provide utility services within JJ's Mobile Homes' service area.

REVISION OR REVOCATION OF CERTIFICATES

Section 367.111(1), Florida Statutes, provides that a certificate of authorization may be revised or revoked upon certain grounds. The City contends that we should take such action regarding the certificates issued to JJ's Mobile Homes.

First, the City argues that we should delete the annexed property from JJ's Mobile Homes' certificates because the utility could only extend service into the annexed area at an unreasonable cost. However, the City presents no information indicating what that cost might be.

ORDER NO. 23500
DOCKET NO. 900341-WS
PAGE 7

We believe that the circuit court order discussed above resolved this issue in favor of JJ's Mobile Homes. Although the order did not specifically address the expenses JJ's Mobile Homes would incur to extend service, it found that the utility has the "present ability" to provide service. Additionally, the court found that JJ's Mobile Homes' water and wastewater lines extend to a point immediately adjacent to the annexed property and are much closer to the annexed property than are the City's lines. The court also found that the utility's water and wastewater systems were designed and constructed for the purpose of providing service to the entire certificated area and that it has the capacity to expand to provide service to the proposed development. We agree with the court's conclusions. The facts found to be true by the court and our investigation indicate that JJ's Mobile Homes' expenses to expand service into the annexed property would not be unreasonable.

Second, the City argues that JJ's Mobile Homes' certificates should be revoked because service was not provided to the annexed property within five years after the date the certificates were issued. Although Section 367.111(1) authorizes us to revoke a certificate under these circumstances, the statute is not mandatory. A review of our prior orders indicates that this authority has been infrequently exercised. We believe that there has been no information presented here to support revoking the certificates issued to JJ's Mobile Homes. Therefore, we decline to either amend or revoke the certificates issued to JJ's Mobile Homes.

It is, therefore,

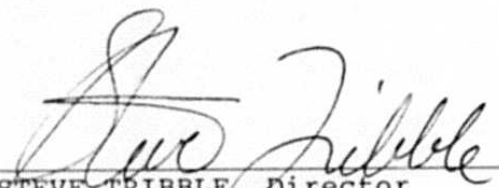
ORDERED by the Florida Public Service Commission that the City's complaint requesting the revision or revocation of Certificates Nos. 298-W and 248-S issued to JJ's Mobile Homes, Inc. d/b/a The Dora Pines Mobile Home Park Estates is hereby denied. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final, unless an appropriate petition in the form provided by Rule 25-22, Florida Administrative Code, is received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDER NO. 23500
DOCKET NO. 900341-WS
PAGE 8

ORDERED that in the event that this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission
this 17th day of SEPTEMBER, 1990.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ASD

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 8, 1990.

ORDER NO. 23500
DOCKET NO. 900341-WS
PAGE 9

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.