

**Eric Fryson**

080562-WU

**From:** Patti Eining [patti@bap-law.com]  
**Sent:** Tuesday, October 02, 2012 4:15 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Marty Smith  
**Subject:** PSC Docket #080562-WU/Filing Petitioner's Exceptions to Recommended Order  
**Attachments:** Exceptions.pdf

Attached for Filing please find the Petitioner's Exceptions to the Recommended Order. We will send a Notice of Appearance for filing by separate email. Please let me know if there is anything else you require.

Patti Eining, FRP  
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DOCUMENT NUMBER DATE  
06657 OCT-2 2012  
FPSC-COMMISSION CLERK

10/2/2012

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

EAST MARION SANITATION SYSTEMS, INC. )

Petitioners, )

vs. )

PUBLIC SERVICE COMMISSION, )

Respondent. )

Case No.: 12-0909

PETITIONER'S EXCEPTIONS TO RECOMMENDED ORDER

PETITIONER, EAST MARION SANITARY SYSTEMS, INC., (hereinafter referred to as "East Marion" or "Petitioner") hereby files its Exceptions to the Recommended Order entered by Administrative Law Judge W. David Watkins, on September 17, 2012.

The procedural history of this case is set forth in the Recommended Order, and Petitioner does not object to the Recommended Order's statement of procedural history. Further, Petitioner acknowledges and recognizes that it did not make a formal appearance at the hearing, and that its representative who appeared at the hearing was not an officer or agent of the Corporation, but was instead an independent contractor with significant knowledge regarding the details of utility service.

As set forth throughout the record, Petitioner is a small utility company providing service to fewer than 90 houses. Further, Petitioner entered into a Settlement Agreement with the majority of the Intervenors, and this settlement was approved by the Public Service Commission on December 12, 2011.

In its Order approving Settlement Agreement, the Commission specifically excluded two Intervenors, Mr. and Ms. Mallon, from the terms of the Settlement Agreement, because they did not sign the Settlement Agreement. The Commission then defined the remaining issue with respect to these two parties as follows:

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“The remaining non-signatory parties are advised that the maximum relief that we will be able to grant either Intervenor was that set forth in the original Order, an irrigation meter at the cost of \$70.00. In other words, if either or both Mr. Will or Ms. Mallon is successful in proving that they properly requested a meter, the only advantage they would gain over not signing the Settlement Agreement is that they will not be obligated to keep the irrigation meter for three years.” (Emphasis added).

Based on this specific language that defined the Petitioner’s maximum exposure, Petitioner chose not to retain legal counsel, and to send a person that Petitioner viewed to be its authorized representative to the hearing (however, as previously stated, Petitioner is not objecting to the Administrative Law Judge’s refusal to let its representative appear on its behalf at the hearing; rather, these exceptions are limited to the following specific described matters).

Next, the Notice of Hearing entered by Administrative Law Judge Watkins specifically identified the issue for hearing as follows: Are Intervenor’s Mallon and Will entitled to an irrigation meter at the prior tariffed rate (see Notice of Hearing dated April 11, 2012). Thus, the issue described in the Notice was in keeping with the Commission’s determination that the only advantage to the Intervenor’s over the Settlement Agreement is that they would not be obligated to keep the irrigation meter for three years. That is, the only issue to be determined would be their entitlement to an irrigation meter for the \$70.00 meter fee.

The Settlement Agreement approved by the Commission and referenced by the Hearing Officer in his Proposed Order details the type and manner of meter installation. This is described in detail on Exhibit “A” which was attached to the Stipulation, and specifically describes an irrigation line that would serve “two houses rather than the more expensive dedicated line that goes directly to the main” (“See Attached “A” to Settlement Agreement, together with the diagram that is part of the Attachment”).

A detailed review of the documents and pleadings, from the inception of this case until the Recommended Order, showed no mention of a dedicated irrigation line, other than where that issue is specifically addressed in the Settlement Agreement, as adopted by the Commission. The Recommended Order specifically references this Memorandum in paragraphs 23 and 24, and recognizes that it provides for a single line serving two houses, instead of a dedicated line.

However, the Recommended Order then goes on to state that Intervenors Will and Mallon specifically rejected the shared line and sought a dedicated line (See Paragraph 26 of the Recommended Order) This finding is specifically contrary to the narrow issue defined by the Commission, because the Commission specifically stated that the relief available to the Intervenors Will and Mallon would be the same relief agreed to in the Settlement Agreement, except for the three-year minimum term. That is, the relief contemplated by the Commission in its Order was the shared waterline as specifically described in Exhibit "A" to the Settlement Agreement and detailed on the attached drawing, not the dedicated lines subsequently incorporated in the Hearing Officer's Recommended Order. Rather, the issue regarding a dedicated line does not appear in any of the pleadings, and specifically is not included in the Commission's Order dated December 12 2011, and was not an issue properly before the Hearing Officer.

The record, together with the Hearing Officer's Recommended Order, shows that a dedicated line is a more expensive installation. Had this been specified as an issue for determination, Petitioner would have taken a different approach, and been in a specific position of being able to counter the testimony of Intervenors regarding the dedicated line. However, Petitioner relied upon the Commission's Order, and the Notice of Hearing in deciding to minimally defend Intervenors' claims

THEREFORE, Petitioner sets forth the following exceptions to the Recommended Order by the Hearing Officer on September 17, 2012:

Paragraph 26 regarding the configuration of an irrigation line pursuant to the Settlement Agreement raises an issue outside of and beyond the Commission's Order dated December 12, 2011. Thus, this Paragraph should be stricken in its entirety.

Paragraph 36, to the extent that it references the configuration of the irrigation line, expands the issue as to the limited issue defined by the Commission December 12, 2011. Thus, Intervenor should be bound by the Commission's Order, and any reference to a dedicated line, or any configuration other than that set forth in the Settlement Agreement, as adopted by the Commission, should be removed from the Final Order.

Paragraph 37 regarding the effect of a dedicated line is irrelevant, and should be stricken in its entirety

Paragraph 39, with respect to that portion of paragraph regarding a "dedicated" line, should be stricken, because the issue of a dedicated line was not set forth in the Commission's December 12, 2011 Order.

Paragraph 40 and the Hearing Officer's concluding recommendation should be modified with the specific provision regarding a dedicated line being removed, and instead, Intervenor Will and Mallon should be entitled to an irrigation line in accordance with the Settlement Agreement, as incorporated and adopted by the Commission in its December 12, 2011 decision.




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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Exceptions to the Recommended Order was forwarded by email and U.S. mail to Lisa C. Bennett, Esquire, Office of General Counsel, lbennett@pc.state.fl.us, Martha F. Barrera, Esq., Florida Public Service Commission, mbarrera@psc.state.fl.us; Millicent Mallon, millicentmallon@earthlink.net, 1075 NE 130<sup>th</sup> Terrace, Silver Springs, Florida 34488, Terry Will, Terry99wi@aol.com, 1385 NE 130<sup>th</sup> Terrace, Silver Springs, FL 34488; Mike Smallridge, Mike Smallridge Utility Consultant, utilityconsultant@yahoo.com, 1645 W. Main Street, Inverness, FL 34450; Ann Cole, Commission Clerk, Public Service Commission at 2540 Shumard Oak Blvd., Tallahassee, FL 32399 and to S. Curtis Kiser, General Counsel, Office of the Commission Clerk, Public Service Commission at 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850 on the 2<sup>nd</sup> day of October, 2012.



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Marty Smith