

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Approval of) DOCKET NO. 950758-WS
Transfer of Facilities of Harbor) ORDER NO. PSC-96-1179-PCO-WS
Utilities Company, Inc., to) ISSUED: September 20, 1996
Bonita Springs Utilities and)
Cancellation of Certificates)
Nos. 272-W and 215-S in Lee)
County)
_____)

ORDER GRANTING MOTION FOR LEAVE TO FILE LATE-FILED NOTICE

On September 18, 1996, Bonita Springs Utilities, Inc. (BSU), filed a Motion for Leave to File Late-Filed Notice. By Order No. PSC-95-1424-PCO-WS, issued November 22, 1995, BSU was required to give written notice no less than 14 days prior to the hearing specifying the date, time, location and purpose of the hearing to each of BSU's customers within the territory at issue, pursuant to Rule 25-22.0405(4), Florida Administrative Code. By Order No. PSC-96-0536-PCO-WS, issued April 16, 1996, an administrative hearing pursuant to Section 120.57(1), Florida Statutes, was set in this proceeding for September 30, 1996. However, BSU gave notice to the former customers of Harbor Utilities Company, Inc. (Harbor), on September 18, 1996, in violation of Order No. PSC-95-1424-PCO-WS.

BSU, in its motion, requested leave to give late notice, stating that its failure to give timely notice was due to inadvertence and that it believed no party will be prejudiced. Barbara F. Fagan, on September 19, 1996, stated to staff counsel that, while she believes BSU's tardiness was not inadvertent, but purposeful, she did not wish to upset the scheduled date of the hearing and would, therefore, not respond in opposition to BSU's motion. On September 19, 1996, staff counsel polled the remaining parties who have objected in this proceeding (with the exception of one who cannot be located) and represents that none of them wish to respond to BSU's motion.

Under Rule 25-22.0405(4), Florida Administrative Code, "[t]he Commission may require any public utility ... to give notice to its customers by mail, as may be deemed reasonably necessary by the Commission to afford adequate notice to the customers of the utility." Under Rule 25-22.0405(2), Florida Administrative Code, notice of public utility hearings shall be given by this Commission to the clerk of the board of the county commissioners of each county affected, the chief executive officer of each municipality in the area affected, all parties of record and all persons who have requested notice of such proceeding. This Commission gave notice as required on September 12, 1996.

DOCUMENT NUMBER-DATE
10037 SEP 20 10
FPSC-RECORDS/REPORTING

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 25-22.0376, 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.

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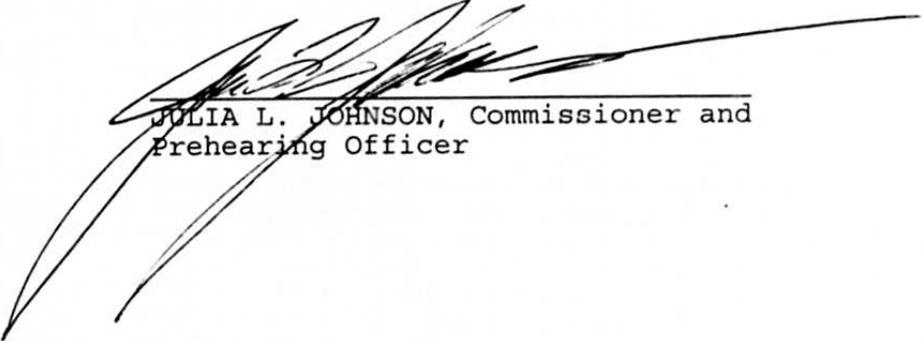
Rule 25-22.0405(4), Florida Administrative Code, is invoked in the discretion of this Commission. In this case, it was invoked by means of Order No. PSC-95-1424-PCO-WS. Although Rule 25-22.040, Florida Administrative Code, requires that final hearing notice be given no less than 14 days with respect to all parties of record, Rule 25-22.0405(4), Florida Administrative Code, does not require that notice be given to the customers of the utility by a time certain. Thus, the time to notice the customers may be set as this Commission deems suitable, in this case, 14 days. Since the time of notice, in addition to invocation of the rule is discretionary with the Commission, it is within the authority of this Commission to modify the time of notice for good cause shown upon the request of the utility.

Therefore, upon consideration, I find it appropriate to grant BSU's motion for leave to file late-filed notice to the former customers of Harbor of the hearing in this docket scheduled for September 30, 1996. It is understood that in addition to the notice to customers, BSU has represented that it will publish similar notices in the Bonita Banner, the Naples Daily News, and the Ft. Myers News Press as soon as possible.

Based on the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that Bonita Springs Utilities, Inc.'s Motion for Leave to File Late-Filed Notice is granted.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 20th day of September, 1996.



JULIA L. JOHNSON, Commissioner and
Prehearing Officer

(S E A L)

CJP