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FILE COPY**

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August 2, 1991

Hon. Steve Tribble, Clerk  
Florida Public Service Commission  
101 E. Gaines Street  
Tallahassee, FL 3399-0850

891280-WS

Re: Betmar Utilities, Inc. v. City of Zephyrhills and  
Public Service Commission

Case No.: 91-1159

Dear Mr. Tribble:

Enclosed please find an original and one copy of Petitioner's  
Exceptions to the Recommended Order of the Hearing Officer in this  
cause for filing with the Clerk, which was inadvertently sent to  
the Division of Administrative Hearings.

Should you have any questions please feel free to contact  
me.

Sincerely,

Scott L. Knox

*Mary Jane Stein*

SIGNED IN MR. KNOX'S ABSENCE  
TO AVOID DELAY

- ACK  mjs
- AFA  Enclosures
- APP
- CAF
- CMU
- CTR
- EAG
- LEG
- LIN
- OPC
- RCH
- SEC
- WAS
- OTH

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*[Signature]*  
FPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

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PSC-RECORDS/REPORTING

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DOAH NUMBER 91-001159

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

BETMAR UTILITIES

Petitioner,

VS

CITY OF ZEPHYRHILLS

Respondent,

and

PUBLIC SERVICE COMMISSION

Intervenor.

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EXCEPTIONS TO RECOMMENDED ORDER

Petitioner, **BETMAR UTILITIES, INC.**, by and through its undersigned attorney, hereby files its exceptions to the recommended Order of the Hearing Officer in this cause as follows:

1. The Petitioner takes exception to the rejection of Betmar's proposed Finding of Fact No. 14. That proposed Finding of Fact states as follows:

"Betmar provides sewer collection services only. Sewer treatment services are provided by Pasco County under an agreement with Betmar Utilities."

The above referenced proposed finding was unrefuted in the evidence presented at the hearing.

2. The Petitioner takes exception to the Hearing Officer's rejection of proposed Finding of Fact No. 26, as submitted by the

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Petitioner. The allegations set forth in that proposed Finding of Fact were supported by unrefuted evidence.

3. The Petitioner takes exception to proposed Finding of Fact No. 20. The Finding that the County has placed a "possible qualification" on the term of years in the agreement by virtue of the referenced language is a speculative conclusion unsupported by any substantial competent evidence of record and is therefore an improper Finding of Fact.

4. The Petitioner takes exception to the proposed Finding of Fact No. 21 of the Recommended Order as being irrelevant. The Public Service Commission is not required to approve the agreement for service between Pasco County and Betmar Utilities.

5. The Petitioner takes exception to the Conclusions of Law made by the Hearing Officer in the Recommended Order pertaining to the legal effect of the contract and the requirements of Rule 25-30.036 Florida Administrative Code. Specifically, the Petitioner takes exception to the following statements:

"Further scrutiny reveals the amendment application is materially deficient in that the required ownership for the long term 99 year lease regarding utility treatment facilities is non-existent. Even the proposed 25 year permitted use agreement regarding the treatment facilities contains conditions subsequent that severely limit the County's obligations under the agreement. As a matter of law, the agreement lacks the certainty required by Rule 25-30.036 Florida Administrative Code."

Rule 25-30.036 does not even contemplate a situation in which treatment is provided by a governmental entity to a private

utility which provides only collection services. Rule 25-30.036 clearly pertains to a utility providing treatment facilities where it must be demonstrated that the utility owns or leases the site upon which the treatment and disposal facilities are located. The Hearing Officer's conclusion as to legal effect of that rule is therefore erroneous as a matter of law.

6. The Petitioner takes exception to the following language set forth in the legal conclusions to the Recommended Order:

"Although the proposed amendment application contains numerous public benefits, it is contrary to the public interest to cause future Betmar customers to rely on a wastewater treatment agreement that lacked certainty. The conditions subsequent, which are out of Betmar's control, makes the proposed agreement with the County unreliable, even for the proposed 25 year term."

The agreement with the County is not a proposed agreement but, the unrefuted evidence demonstrated, is an executed agreement in effect at the present time. The Hearing Officer's reliance upon the language set forth in Paragraph 20 of her Proposed Findings of Fact in no way eliminates the responsibility to provide the treatment services provided for in the agreement and any conclusion to that effect is sheer speculation which is not supported by any evidence of record. Consequently, the application as demonstrated by the clear, convincing and unrefuted evidence, is in the public interest, which is even the conclusion drawn by the Hearing Officer.

7. The Petitioner takes exception to the recommendation of the Hearing Officer. The recommendation is contrary to the

utility which provides only collection services. Rule 25-30.036 clearly pertains to a utility providing treatment facilities where it must be demonstrated that the utility owns or leases the site upon which the treatment and disposal facilities are located. The Hearing Officer's conclusion as to legal effect of that rule is therefore erroneous as a matter of law.

6. The Petitioner takes exception to the following language set forth in the legal conclusions to the Recommended Order:

"Although the proposed amendment application contains numerous public benefits, it is contrary to the public interest to cause future Betmar customers to rely on a wastewater treatment agreement that lacked certainty. The conditions subsequent, which are out of Betmar's control, makes the proposed agreement with the County unreliable, even for the proposed 25 year term."

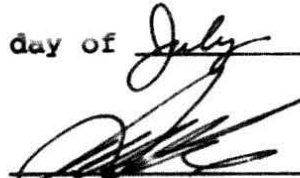
The agreement with the County is not a proposed agreement but, the unrefuted evidence demonstrated, is an executed agreement in effect at the present time. The Hearing Officer's reliance upon the language set forth in Paragraph 20 of her Proposed Findings of Fact in no way eliminates the responsibility to provide the treatment services provided for in the agreement and any conclusion to that effect is sheer speculation which is not supported by any evidence of record. Consequently, the application as demonstrated by the clear, convincing and unrefuted evidence, is in the public interest, which is even the conclusion drawn by the Hearing Officer.

7. The Petitioner takes exception to the recommendation of the Hearing Officer. The recommendation is contrary to the

substantial competent evidence which demonstrated that Betmar does have an existing 25 year agreement with Pasco County. There is no substantial competent evidence of record to establish that Betmar will not receive the continued use of the County's southeast subregional wastewater treatment plant for the 25 year term set forth in the agreement.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by regular U.S. Mail, to Robert J. Pierson, Esq., 101 East Gaines Street, Tallahassee, FL 32399-0863 and Thomas P. McAlvanah, Esq., 37818 Highway 54, W. Zephyrhills, FL 33541, this 24<sup>th</sup> day of July 1991.

  
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