

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and Petition ) DOCKET NO. 920649-WS  
of Cynwood Investments Against ) ORDER NO. PSC-92-0636-PCO-WS  
TAMIAMI VILLAGE UTILITY, INC. ) ISSUED: 07/09/92  
Regarding Termination of Water )  
and Wastewater Services in Lee )  
County )

ORDER GRANTING MOTION  
FOR EMERGENCY RELIEF

On June 24, 1992, Cynwood Investments (Cynwood) filed a complaint against Tamiami Village Utility, Inc., (TVU). In its complaint, Cynwood, a RV park and bulk customer of TVU, alleges that TVU has threatened to terminate service to Cynwood if Cynwood did not submit a viable plan for curing an alleged infiltration problem. TVU believes that Cynwood has violated TVU's tariff by causing this infiltration. Cynwood requests that the Commission enter an order forbidding TVU from terminating service pending resolution of a related dispute in the local Circuit Court where TVU is seeking damages against Cynwood for causing the alleged infiltration.

By telephone and facsimile on July 2, 1992, counsel for TVU informed staff that TVU would terminate service to Cynwood that day because "[t]he current emergency situation created by record rainfall necessitates the discontinuance of service in the park in accordance with tariff provisions immediately." However, TVU refrained from terminating service when the Director of Division of Water and Wastewater subsequently informed TVU that Rule 25-30.320(6), Florida Administrative Code, prohibits a utility from terminating service after noon on any day before a holiday (Friday, July 3, 1992) even if it was otherwise entitled to do so. TVU did not terminate Cynwood's service.

On July 6, 1992, Cynwood filed a Motion for Emergency Relief wherein it asks the Commission to enter an emergency order barring TVU from terminating service during the pendency of the Circuit Court dispute. In the motion, Cynwood recounts the events of July 2, as described above, and adds:

"In the week preceding the rains, however, [TVU] informed [Cynwood] that service to the RV park would be terminated at noon on July 2, 1992. The reason given for this termination was that Cynwood had failed to meet the utility's demands...for curing the alleged infiltration problem."

DOCUMENT NUMBER-DATE

07416 JUL -9 1992

FOCO-RECORDS/REPORTS

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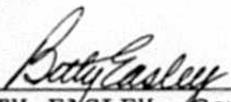
In its motion, Cynwood disputes TVU's allegation and TVU's interpretation of the tariff in question.

In consideration of the above, I will grant, in part, Cynwood's Motion For Emergency Relief. Since Cynwood disputes the factual and legal premises for TVU's terminating service, I do not think it appropriate or in the public interest for TVU to terminate service presently. Whether or not the dispute between the parties in Circuit Court has any bearing on the resolution of this matter, however, is questionable. In addition, TVU has not yet filed a response to Cynwood's motion (the response is due July 20) or to Cynwood's complaint (response due July 16). Therefore, I do not think that TVU should be enjoined from terminating service for the period requested in Cynwood's motion, but rather until further Order of this Commission or thirty (30) days from the date of this Order, whichever occurs first. This period will allow the Commission time to review TVU's responses and take whatever further action it deems necessary.

It is, therefore,

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that the Motion for Emergency Relief filed by Cynwood Investments is hereby granted in part, and Tamiami Village Utility, Inc., is enjoined from terminating service to Cynwood Investments until further order of the Commission or thirty (30) days from the date of this Order, whichever occurs first.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 9th day of July, 1992.

  
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BETTY EASLEY, Commissioner  
and Prehearing Officer

( S E A L )

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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.