

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and petition) DOCKET NO. 920649-WS
of Cynwyd Investments against) ORDER NO. PSC-92-0854-FOF-WS
TAMIAMI VILLAGE UTILITY, INC.) ISSUED: 08/24/92
regarding termination of water)
and wastewater services in Lee)
County)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER PROHIBITING TERMINATION OF SERVICE

BY THE COMMISSION:

CASE BACKGROUND

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

By telephone and facsimile letter on July 2, 1992, counsel for TVU informed the Commission that TVU would terminate service to Cynwyd 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 we informed it 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 temporarily refrained from terminating Cynwyd's service.

DOCUMENT NUMBER-DATE

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PSC-RECORDS/REPORTS

On July 6, 1992, Cynwyd filed a Motion for Emergency Relief wherein it asked the Commission to enter an emergency order barring TVU from terminating service during the pendency of the Circuit Court dispute. In this motion, Cynwyd recounted the events of July 2, as described above, and added that in the week preceding the rains, TVU threatened to terminate service at noon on July 2, 1992, if Cynwyd failed to meet the utility's demand to cure the alleged infiltration problem. In the motion, Cynwyd disputed TVU's allegations and TVU's interpretation of the tariff provisions in question.

By Order No. PSC-92-0636-PCO-WS, issued July 9, 1992, the Prehearing Officer granted in part Cynwyd's Motion For Emergency Relief. The Order enjoined TVU from terminating service until further Order of the Commission or thirty days from the date of the Order, whichever occurred first.

At the time Order No. PSC-92-0636-PCO-WS was issued, TVU had not yet filed a response to Cynwyd's Motion for Emergency Relief or to Cynwyd's complaint. On July 14, TVU filed a response in opposition to Cynwyd's Motion for Emergency Relief; and on July 15, TVU filed a timely answer to Cynwyd's Petition and Complaint. On July 24, Cynwyd filed a Motion for Extension of Order Granting Motion for Emergency Relief. On August 3, TVU filed a response to the latter motion.

PROHIBITION AGAINST SERVICE TERMINATION

In its answer to Cynwyd's complaint, TVU states that it has attempted to resolve this dispute with Cynwyd, but Cynwyd was unwilling to address the infiltration problem. TVU asserts, "The infiltration coming from Cynwyd's lines is so excessive that the capacity of TVU's plant is exceeded as a result. Corrective action must occur under [DER] rules and regulations." TVU maintains that Cynwyd has violated paragraph 25A of TVU's tariff by allowing excess infiltration into the utility's mains and that TVU is entitled to terminate Cynwyd's service pursuant to paragraphs 25 and 5 of its tariff.

In its response to Cynwyd's Motion for Emergency Relief, TVU argues that Cynwyd elected to litigate the matter of injunctive relief before the Circuit Court and, therefore, the Commission should not entertain Cynwyd's request.

As stated above, on July 24 Cynwyd filed a Motion for Extension of Order Granting Motion for Emergency Relief. In this motion Cynwyd asks that the Commission extend its prohibition against TVU, which would expire August 8, for an additional thirty days. Cynwyd explains that it has proposed to TVU that the two share the cost of an independent engineering study for the purpose of determining the source of the alleged infiltration, the options for repairing the problems discovered, and the amount of any infiltration emanating from the RV park. In its response, TVU states that it has rejected Cynwyd's proposal, and, again, it complains of Cynwyd's seeking injunctive relief in the Circuit Court.

Because Cynwyd disputes the factual and legal premises for TVU's terminating service, we do not think that it would be appropriate or in the public interest to allow TVU to terminate Cynwyd's service even though Cynwyd has not requested a Section 120.57 hearing. At the same time, however, we do not think that it would be appropriate to grant Cynwyd the relief it has requested.

Under Chapter 367, Florida Statutes, this Commission, not the Circuit Court, has the authority to interpret TVU's right to terminate service under the tariff. TVU's Circuit Court complaint for damages against Cynwyd for causing the alleged infiltration may have little or nothing to do with the question of whether or not TVU can terminate Cynwyd's service. In the Circuit Court, Cynwyd and TVU apparently intend to litigate the question of who owns the lines in the RV park. However, we note that in Order No. PSC-92-0807-FOF-WS, issued August 11, 1992, in Docket No. 910560-WS, this Commission decided that TVU's obligation to provide service to Cynwyd ended at the point of delivery, which we found to be the meter for water service and the property line for wastewater service.

We think that the thirty-day extension suggested by Cynwyd would not allow the parties sufficient time to attempt to work out their dispute--should they choose to do so--nor would it allow this Commission sufficient time to investigate the bases for the complaint and attempt to resolve the dispute by a proposed agency action (PAA) Order.

In consideration of the above, we think it appropriate to prohibit TVU from terminating Cynwyd's service during the pendency of Cynwyd's complaint at the Commission. We have contacted DER and

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have been assured that TVU's situation does not present an emergency. Additionally, as we voted in this matter on August 4, 1992, that date is the effective date of the action taken herein.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that, on the Commission's own motion, Tamiami Village Utility, Inc., is prohibited from terminating service to Cynwyd Investments during the pendency of Cynwyd's complaint at the Commission.

By ORDER of the Florida Public Service Commission, this 24th day of August, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida

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Administrative Code; or 2) 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 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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.