

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint for entry of an order directing JJ'S MOBILE HOMES, INC. to provide permanent service in Lake County to George Wimpey of Florida, Inc. d/b/a/ Morrison Homes)	DOCKET NO. 910956-WS
)	ORDER NO. 25562
)	ISSUED: 01/02/92

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY

PROPOSED AGENCY ACTION
ORDER REQUIRING UTILITY TO COMPLETE EXPANSION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On September 16, 1991, George Wimpey of Florida, Inc. and Shelby Development, d/b/a Monarch Homes (the developer), filed an "Emergency Complaint" seeking the Commission to 1) direct the utility to enter an agreement to provide permanent service; 2) require the utility to file a construction schedule; and 3) direct the utility to provide the 216 equivalent residential connections (ERCs) capacity contracted for in the Temporary Service Agreement. The developer also requested an emergency hearing in order to avoid disruption of water and wastewater services. This is the second complaint for service filed with this Commission by the developer this year. The first complaint was resolved by Order No. 24412, issued April 22, 1991, which ordered JJ's to provide service to the developer.

During the pendency of the previous complaint, a Temporary Service Agreement was entered into on April 12, 1991, which

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provided that 216 ERCs were to be reserved for the developer for a fee of \$156,685. The utility is currently providing bulk service to the developer. To date, the parties have not entered into a Permanent Service Agreement.

The findings and requirements set forth below resolve the issues raised in the subject complaint.

EXPANSION OF CAPACITY

JJ's available capacity at the time of filing of the complaint was 22 ERCs. The developer alleged that it would use all of the 22 ERCs by October, 1991. Both parties acknowledge that in order to provide the 216 ERCs for which the utility collected \$156,685 from the developer, the utility will have to meet the Department of Environmental Regulations (DER) system redundancy requirements. In fact, absent a waiver from DER, the utility will have to meet DER system redundancy requirements for any capacity in excess of the remaining 22 ERCs.

In order to meet DER system redundancy requirements the utility is required, at a minimum, to install a second well and an emergency power source. According to the information provided in the utility's answer to the complaint, a drilling permit and consumptive use permit were issued to the utility by the St. John's River Management District on August 13, 1991, and the utility is currently undertaking construction of all facilities necessary to provide service to those ERCs for which it has commitments. We find that the utility has an obligation pursuant to Rule 25-30.540(3)(a), Florida Administrative Code, to reserve the necessary treatment capacity upon collection of service availability charges for the time specified in the Temporary Service Agreement.

Based on the foregoing, we find that the developer has shown an immediate need for additional capacity and that the utility is in violation of Rule 25-30.540, Florida Administrative Code, for failure to reserve the necessary treatment capacity. Counsel for the utility stated at the agenda conference on December 17, 1991, that the anticipated date of completion has been revised from December 31, 1991, to February 29, 1992. Accordingly, we have determined that it is reasonable under the circumstances to require the utility to take all steps necessary to provide the additional capacity for which the utility has collected service availability fees and to provide proof of DER certification no later than

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February 29, 1992, the date by which the utility indicated construction will be completed.

Failure to provide documentation of the completion of all steps for expansion and proof of DER certification by February 29, 1992, shall result in the immediate initiation of show cause proceedings against this utility for failure to reserve capacity for which service availability charges have been collected in violation of Rule 25-30.540, Florida Administrative Code, and for failure to follow a Commission Order.

PERMANENT SERVICE AGREEMENT

In its answer to the complaint, the utility stated that a Permanent Service Agreement was being drafted at the time the developer filed its complaint in September, and that it, "would be available to the developer within a matter of days." To date, no agreement has been reached. The utility and developer have a history of disagreement relating to the provision of service by the utility to the developer. In Order No. 24412, the utility was ordered to serve the developer, and it was at that time that the Temporary Service Agreement was entered into. Based on our earlier finding that the Temporary Service Agreement is still in effect and that a Permanent Service Agreement was to be available to the developer, "within a matter of days," and further, based on expressed desire of the parties to enter into a Permanent Service Agreement, we find it appropriate to require the parties to complete negotiations and execute a Permanent Service Agreement no later than January 31, 1992.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that JJ's Mobile Homes, Inc. shall provide documentation of the completion of all steps for expansion and proof of DER certification no later than the close of business on February 29, 1992. It is further

ORDERED that George Wimpey of Florida, Inc. and Shelby Development, d/b/a Monarch Homes, and JJ's Mobile Homes, Inc. shall complete negotiations and execute a Permanent Service Agreement no later than January 31, 1992. It is further

ORDERED that this docket shall be closed administratively after the protest period has expired and all the requirements as set forth in the body of this Order have been met.

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By ORDER of the Florida Public Service Commission, this 2nd
day of JANUARY, 1992.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

CB

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 1/23/92.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.