

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for declaratory) DOCKET NO. 940083-SU
statement pertaining to Chapter) ORDER NO. PSC-94-0472-DS-SU
93-151, Section 2, Section) ISSUED: April 20, 1994
381.00655, F.S., regarding)
connection of existing onsite)
sewage treatment and disposal)
systems to central sewerage)
system; requirements, by BETMAR)
UTILITIES, INC. in Pasco County.)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

On January 24, 1994, Betmar Utilities, Inc. (Betmar) petitioned the Commission for a declaratory statement asking whether Section 381.00655, Florida Statutes, applies to Betmar. No facts were set forth in the petition. Notice of the petition was timely published in Florida Administrative Weekly on February 25, 1994, as prescribed in Section 120.565, Florida Statutes, and Rule 25-22.020, Florida Administrative Code.

Pursuant to Section 120.565, Florida Statutes, and Rule 25-22.020, Florida Administrative Code, a declaratory statement shall set out the agency's opinion as to the applicability of a specified statutory provision or of any rule or order of the agency as it applies to the petitioner in its particular set of circumstances only. Rule 25-22.020(2)(e) requires the petitioner to describe how the rule, order, or statute may or does affect the petitioner in its particular set of circumstances. Because Betmar set forth no facts in its petition, there is no "particular set of circumstances" on which to base an answer. The utility simply states its name, address, and quotes Section 381.00655, Florida Statutes, verbatim and then asks "[d]oes Betmar Utilities, Inc. and their customers fall into this criteria?"

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Section 381.00655 was enacted by the Florida Legislature in 1993. The Department of Health and Rehabilitative Services (HRS) is the agency responsible for enforcing Chapter 381. Section 381.00655(1)(a) requires the owners of properly functioning septic tanks to connect with a publicly owned or investor-owned sewerage system within 365 days after the utility notifies the owner that the utility's system is available for connection. Owners of septic tanks in need of repair or modification are required to connect to a central system within 90 days once the system becomes available. Section 381.00655(1)(b), Florida Statutes. HRS has not completed rulemaking to implement the statute. Certain ambiguities as to notice and enforcement, connection fees and payment plans, hardship criteria, and waiver remain.

Although we believe the ambiguities in the statute should be resolved, a declaratory statement is not the appropriate avenue to do so. Florida Optometric Asso. v. Department of Professional Regulation, Board of Opticianry, 567 So.2d 928, 937 (Fla. 1st DCA 1990). We decline to issue a declaratory statement in this instance because Betmar's question is not limited to unique facts and a specific petitioner. Because it would be inappropriate for the Commission to issue a declaratory statement concerning a statute that falls under the expertise of HRS, and because any opinion rendered would necessarily apply to more than one wastewater utility, we decline to answer the declaratory statement.

It is, therefore,

ORDERED by the Florida Public Service Commission that the petition for declaratory statement pertaining to Section 381.00655, Florida Statutes, filed by Betmar Utilities, Inc. is denied. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 20th day of April, 1994.

BLANCA S. BAYO, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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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 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 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.