

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause ) DOCKET NO. 940254-WU  
proceedings against AIR BASE ) ORDER NO. PSC-94-1155-FOF-WU  
MOTOR COURT for operating a ) ISSUED: September 20, 1994  
water system in Duval County )  
without a certificate. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING AIR BASE MOTOR COURT'S MOTION FOR RECONSIDERATION

BY THE COMMISSION:

BACKGROUND

Air Base Motor Court (ABMC) is a utility in Duval County providing water service to its strip shopping center and Azalea Mobile Home Park (Azalea). The Public Service Commission (Commission) learned about ABMC after Azalea called and complained that ABMC, without prior notice, had increased its rate. Our Staff investigated and told ABMC that pursuant to Chapter 367, Florida Statutes, it must file an application for a certificate to provide water service, or it must file an application for an exemption from the Commission's jurisdiction. At the May 3, 1994, Agenda Conference, we considered the issue of whether ABMC should be ordered to show cause why it should not be fined for operating a utility without a certificate or failing to obtain an exemption from the Commission's jurisdiction. During Staff's discussions with ABMC and Azalea, they became aware of an oral agreement regarding the charges for water services.

During the agenda, ABMC gave oral statements and presented documents to support its position that it was not a utility. ABMC's oral and written statements contradicted those previously given by Azalea. ABMC also gave the Commission newspaper clippings and other documents that discussed the City of Jacksonville's (City) proposed plans to provide water service to the area that ABMC services. Staff confirmed ABMC's statement about the City's proposed plans; however, neither Staff, nor ABMC could provide a specific date on the City's proposed plans. Therefore, based on

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the parties' contradictory statements and the City's proposed plans, we determined that we did not have sufficient data to make an informed decision about ABMC's status. So, by Order No. PSC-94-0611-FOF-WU, issued May 23, 1994, we gave ABMC six months to comply with a number of options. That is, ABMC must present the Commission with a signed lease by Azalea, or it must obtain water service from the City; however, if ABMC cannot comply with these options, it must apply for a certificate to provide water service.

#### MOTION FOR RECONSIDERATION

On June 8, 1994, ABMC filed a Motion for Reconsideration of Order No. PSC-94-0611-FOF-WU. In its motion, ABMC presents the same argument that it gave during the May 3, 1994, Agenda Conference, that is, ABMC does not consider itself to be a utility. In Diamond Cab Company of Miami v. King, 146 So.2d 889, 891 (Fla. 1962), the Court stated that a motion for reconsideration was not a device to be used by the losing party to re-argue a case. Rather, a motion for reconsideration should be used when the reviewing court or, in this case, an agency failed to consider some point of law or fact in the case.

The courts in Hollywood Inc. v. Clark, 153 Fla. 501, 509, 15 So.2d 175 (Fla. 1943) and Maule Industries Inc. v. Seminole Rock and Sand Company, 91 So.2d 307 (Fla. 1956), held that the purpose of a motion for reconsideration was for a court to consider some point that the court had not considered during its initial review. ABMC's motion does not state that the Commission failed to consider any point of law or fact. ABMC's motion affirms the position that it presented during the agenda. The motion also states that ABMC has attempted to execute a lease with Azalea, which Azalea refuses to sign and, based on Azalea's refusal to sign the lease, that it has the right to terminate Azalea's water service pursuant to Order No. PSC-94-0611-FOF-WU.

First, ABMC erroneously states the terms and conditions given in Order No. PSC-94-0611-FOF-WU; this Order merely gives ABMC a number of options from which to choose for compliance. The Order does not mandate that ABMC enter into a lease with Azalea. During the agenda conference, ABMC frequently referenced its oral agreement with Azalea, and when asked if it could obtain a signed lease with Azalea, ABMC stated that it could. ABMC agreed, at the agenda conference, that if it could not obtain a written lease that it would not terminate water service to Azalea without obtaining prior approval from the Commission.

Second, during the May 3, 1994, Agenda Conference, ABMC gave statements and provided documents that indicated that the City

plans to provide water service to the area that ABMC now services. Given the fact that the parties have acknowledged their oral agreement, despite their dispute about its terms and conditions, and the fact that the City plans to provide water service, we did not want to order ABMC to show cause why it should not be fined since we had insufficient and contradictory facts about its status. We also needed additional time to review the City's plans to provide water service. Accordingly, we gave Air Base three options, discussed above, from which to choose for compliance.

Based on the above discussion, we find it appropriate to deny ABMC's motion for reconsideration. Additionally, we hereby reiterate that ABMC cannot terminate water service to Azalea until it seeks and receives prior approval from the Commission. This docket shall remain open to allow Staff an opportunity to verify ABMC's compliance with Order No. PSC-94-0611-FOF-WU.

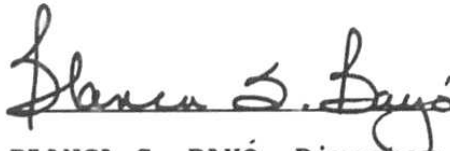
Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Air Base Motor Court's Motion for Reconsideration is hereby denied. It is further

ORDERED that Air Base Motor Court cannot terminate water service to Azalea Mobile Home Park until it seeks and obtains prior approval from the Commission. It is further

ORDERED that this docket shall remain open to allow Staff an opportunity to verify Air Base Motor Court's compliance with Order No. PSC-94-0611-FOF-WU.

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



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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 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. 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.