

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for water) DOCKET NO. 930206-WS
and wastewater certificates in) ORDER NO. PSC-94-1245-FOF-WS
Sumter County by SUMTER) ISSUED: October 11, 1994
UTILITIES, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
JOE GARCIA
DIANE K. KIESLING

ORDER DISMISSING APPLICATION FOR CERTIFICATES

BY THE COMMISSION:

On January 10, 1992, Custer Development Corporation (Custer Development) filed an application for a determination that its wastewater operations in Sumter County are not subject to the jurisdiction of this Commission pursuant to Section 367.021(12), Florida Statutes. We denied its request by Order No. PSC-92-0198-FOF-SU, issued April 13, 1992, because, although no rates were charged for service, a McDonald's restaurant paid the electric costs for operation of the plant, which we construed as "compensation" for service. We also instructed the utility to file an application for certificates of authorization.

On March 1, 1993, the utility filed an application for certificates to provide water and wastewater service in Sumter County, under the name of Sumter Utilities, Inc. (Sumter). On April 1, 1993, McDonald's Corporation (McDonald's) filed a protest to Sumter's application. In its protest, McDonald's asserted that it holds a first mortgage and a promissory note in the amount of \$730,000 against the wastewater treatment plant. The note was executed by 181 Limited, a Florida limited partnership which is a fifty percent stockholder of Sumter, and calls for annual payments of \$91,250. According to the protest, 181 Limited has not made any payments on the note. Therefore, McDonald's has initiated a foreclosure action upon the plant and a portion of the territory requested by Sumter. The foreclosure action is pending.

Also on April 1, 1993, Louise Giddons, an individual who owns land in the requested territory, filed a protest to Sumter's application. Ms. Giddons opposes being forced to take service from Sumter.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On April 6, 1993, the City of Bushnell (Bushnell) filed a petition to intervene. According to Bushnell, its water facilities extended approximately 2,200 feet into the territory requested by Sumter and it is willing, and has the capacity to serve all customers located within the territory. Bushnell contends that it will be able to provide service to this territory within six months. Bushnell's request to intervene was granted by the Commission by Order No. PSC-93-1064-PCO-WS, issued July 21, 1993.

Bushnell also informed this Commission that it is helping to fund a study to provide regional service. A workshop was scheduled to be held on September 14, 1994. At that workshop, a final presentation was to be made to the Bushnell City Council, the Board of County Commissioners for Sumter County, and the Board of the Withlacoochee Water Supply Authority.

Based upon the protests and Bushnell's intervention in this proceeding, this case was set for an administrative hearing, which was originally scheduled to be held on March 23 and 24, 1994. However, due to the foreclosure action, the date of the hearing was reset to October 5 and 6, 1994.

According to the current case schedule, which was established by the Prehearing Officer by Order No. PSC-93-1756-PCO-WS, issued December 7, 1993, Sumter was to have filed its direct testimony and exhibits by June 15, 1994, the objectors and intervenor were to have filed their direct testimony and exhibits by July 15, 1994, and rebuttal testimony and exhibits were due no later than August 10, 1994. Prehearing statements of all parties were due by no later than September 6, 1994. As of September 20, 1994, none of the parties had filed any testimony or prehearing statements.

In addition to the above, we note that Sumter has failed to correct deficiencies found in its application. These deficiencies include insufficient proof of ownership of the land upon which the utility facilities are located, and no statement of profit and loss as required by Rule 25-30.033, Florida Administrative Code. In addition, our staff requested information regarding Sumter's financial and technical ability to provide service, but no such information was ever provided. Indeed, due to 181 Limited's failure to make payments on the note and the foreclosure proceeding, it does not appear that Sumter has the financial or technical ability to provide water and wastewater service. Further, according to the Secretary of State's corporate database, 181 Limited has been involuntarily dissolved for failure to file its 1993 annual report, and may no longer lawfully transact business in the State of Florida. We also note that the Department of Environmental Protection has filed an enforcement action against

Custer Development, 181 Limited's general partner, for numerous violations including operating without a permit, exceeding effluent limitations and operating without a certified operator.

Based upon Sumter's failure to file testimony and exhibits or a prehearing statement, as required by Order No. PSC-93-1756-PCO-WS, we find it appropriate to dismiss its application for certificates. Since Sumter is the party with the burden of proof in this proceeding, this operates as a dismissal of the entire proceeding. Moreover, since Sumter does not possess certificates, it may not lawfully collect compensation of any kind for providing water or wastewater service. However, it shall continue to provide service to McDonald's until the foreclosure proceeding is concluded and ownership of the facilities has been determined.

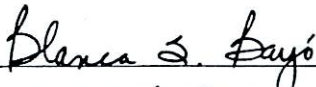
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application for certificates to provide water and wastewater service in Sumter County by Sumter Utilities, Inc., is dismissed. It is further

ORDERED that Sumter Utilities, Inc., shall continue to provide utility services unless specifically relieved of that obligation by this Commission. It is further

ORDERED that until such time as it possesses certificates of authorization, Sumter Utilities, Inc., may not collect compensation of any form for providing utility services.

By ORDER of the Florida Public Service Commission, this 11th day of October, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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ORDER NO. PSC-94-1245-FOF-WS
DOCKET NO. 930206-WS
PAGE 4

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 dismissal of this matter may: 1) file a motion to set aside the dismissal in accordance with Rule 25-22.042, Florida Administrative Code. The motion must state with particularity the grounds upon which the dismissal should be set aside, and must be received by the Director of the Division of Records and Reporting by no later than fourteen (14) days from the date of the issuance of this Order; or 2) 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 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.