

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In Re: Application for Amendment of Certificates Nos. 298-W and 248-S in Lake County by JJ'S MOBILE HOMES, INC. |) | DOCKET NO. 921237-WS |
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| In Re: Investigation Into Provision of Water and Wastewater Service by JJ'S MOBILE HOMES, INC. to its Certificated Territory in Lake County. |) | DOCKET NO. 940264-WS |
| |) | ORDER NO. PSC-95-0154-PCO-WS |
| |) | ISSUED: February 2, 1995 |
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ORDER REQUIRING PRODUCTION OF DOCUMENTS
AND DENYING REQUEST FOR SANCTIONS

This Order addresses the portions of Order No. PSC-94-1202-PCO-WS, issued September 30, 1994, which concern the production of attorney billing statements.

On July 13, 1994, the Office of Public Counsel (OPC) served a request for production of documents upon JJ's Mobile Homes, Inc. (JJ's or the utility). POD No. 1 requested personal income tax returns of Mr. Jordan Hypes, president and primary shareholder of the utility. POD Nos. 3 and 4 solicited copies of certain bills included in the utility's 1992 and 1993 Annual Report which related to balances for the law firm of Rose, Sundstrom & Bentley and for Hartman and Association. On July 28, 1994, JJ's filed an objection to OPC's requests on the grounds that Mr. Hypes' personal tax returns were irrelevant to these proceedings, and that the billing documents for legal services were irrelevant and privileged. The utility stated that it had produced all documents requested in POD Nos. 3 and 4, except for those that contain privileged information.

On September 30, 1994, the Prehearing Officer issued Order No. PSC-94-1202-PCO-WS, which required JJ's to respond OPC's discovery requests. The utility was required to produce Mr. Hypes financial information as requested in POD No. 1. As to POD Nos. 3 and 4, the utility was ordered to provide any billing statements that it had not yet provided to OPC. The utility was further ordered to modify the statements so that no privileged information would be divulged, and to explain to OPC any specific claims of privilege.

The utility has filed a motion for reconsideration of Order No. PSC-94-1202-PCO-WS as it relates to the production of Mr. Hypes' financial information, but raised no objection to complying with the portion of the order which addressed POD Nos. 3 and 4.

On January 12, 1995, OPC filed a Second Motion for Order Compelling Production of Documents That Have Been Ordered by the

DOCUMENT NUMBER-DATE

01253 FEB-28

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Commission to be Produced and for Order Imposing Sanctions. In its motion, OPC asserts that JJ's has not supplied the requested documents as required by Order No. PSC-94-1202-PCO-WS. OPC requests that the Commission compel the utility to immediately produce the requested documents. OPC further requests that, pursuant to Rule 25-22.034, Florida Administrative Code, the Commission sanction the utility for its non-compliance by deeming that it has been conclusively established that JJ's Annual Reports for 1992 and 1993 are inaccurate, that JJ's has provided incorrect information, and that JJ's cannot demonstrate that it has the financial ability to expand its system.

On January 24, 1995, JJ's filed a response to OPC's motion. JJ's asserts that it believes that it has already turned over all of the documents required to be produced by Order No. PSC-94-1202-PCO-WS. JJ's offers to promptly produce another copy of the documents. JJ's objects to OPC's request for sanctions, and states that it believes the matter could have been resolved without the need for formal proceedings if the matter had been raised informally among the parties.

As noted in Order No. PSC-94-1202-PCO-WS, JJ's produced documents relating to POD Nos. 3 and 4, and was ordered to produce any other documents related to billing and explain any particular claims of privilege. JJ's has asserted that it has done so, and that if OPC did not receive these documents it will supply them. JJ's and OPC shall consult each other to determine whether the documents have been provided. If OPC did not receive the documents or is lacking a portion of them, JJ's shall provide copies no later than Friday, February 3, 1995.

The Commission's rules permit the imposition of sanctions against a party that does not comply with discovery procedures or an order requiring compliance with discovery. While the relief sought is one of the sanctions permissible under Rule 1.380(b)(2)(a), Florida Rules of Civil Procedure, sanctions are not appropriate in this matter. Therefore, OPC's request for sanctions is denied.

This matter appears to be a matter of miscommunication among the parties as to whether responses had been received. To that end, the parties are strongly encouraged to contact each other in the future regarding discovery requests before resorting to the filing of a formal motion with the Commission.

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Based upon the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the Office of Public Counsel and JJ's Mobile Homes, Inc. shall consult each other and determine whether the documents have been provided in response to POD Nos. 3 and 4 and Order No. PSC-94-1202-FOF-WS. It is further

ORDERED that JJ's Mobile Homes, Inc. shall provide any documents not already supplied pursuant to POD Nos. 3 and 4 and Order No. PSC-94-1202-FOF-WS, no later than February 3, 1995. It is further

ORDERED that the Office of Public Counsel's request for sanctions is denied.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 2nd day of February, 1995.



JULIA L. JOHNSON, Commissioner and
Prehearing Officer

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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.