

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 921237-WS  
Amendment of Certificates Nos. ) ORDER NO. PSC-93-0363-FOF-WS  
298-W and 248-S in Lake County ) ISSUED: 03/09/93  
by JJ's MOBILE HOMES, INC. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
SUSAN F. CLARK  
JULIA L. JOHNSON  
LUIS J. LAUREDO

ORDER GRANTING MOTION TO DISMISS THE CITY OF EUSTIS  
AND DENYING MOTION TO DISMISS CITY OF MOUNT DORA AND  
RESIDENTS OF THE COUNTRY CLUB OF MOUNT DORA

BY THE COMMISSION:

JJ's Mobile Homes, Inc. (JJ's or the utility) is a Class "C" utility providing water and wastewater services to approximately 138 customers in Lake County. The Country Club of Mt. Dora is a planned subdivision of approximately 780 single family home units being developed in JJ's service territory. The Country Club of Mt. Dora Home Owners' Association, Inc. (Association), an exempt utility, is a bulk service customer of JJ's.

JJ's filed an application on December 7, 1992, to amend its certificates. JJ's seeks authorization to serve additional territory which is within the boundaries of the Country Club of Mount Dora. Objections to this application were filed by the Cities of Eustis and Mt. Dora as well as by approximately twenty-seven residents of the Country Club of Mt. Dora. By Motion to Dismiss Objections filed January 22, 1993, JJ's moved this Commission to dismiss all of the objections. On February 3, 1993, the Office of Public Counsel (OPC) intervened and filed a response to the utility's Motion to Dismiss. The City of Mount Dora filed its response on February 9, 1993.

City of Eustis

In its objection, filed on January 4, 1993, the City of Eustis alleged: (1) that the requested territory is in the City of Mount Dora Utilities Service Area; and (2) that there is a possibility of

DOCUMENT NUMBER-DATE

02629 MAR-93

FPSC-RECORDS/REPORTING

contamination of the Florida Aquifer as a result of the percolating method of effluent disposal used by JJ's.

In its Motion to Dismiss, JJ's asserts that the City of Eustis has failed to show standing pursuant to Section 367.045(4), Florida Statutes, and the test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2nd 478, 481 (Fla. 2nd DCA 1981), because it has not alleged any facts to show that it is substantially affected by the amendment application. JJ's asserts that the City of Eustis has not shown any nexus between itself and the additional service territory requested in the amendment application.

The City of Eustis received notice of the amendment application pursuant to the provisions of Section 367.045(2) (a), Florida Statutes, and Rule 25-30.060(2), Florida Administrative Code. The City's boundaries lie outside the area now being served by JJ's and the expanded service territory proposed in the application; it is not a customer of the utility; and, it has not objected on the ground that the amendment to the certificate is inconsistent with its local comprehensive plan pursuant to Section 367.045(4), Florida Statutes. We find the reference to the possible contamination of the Florida Aquifer to be tenuous at best. No specific allegation was made by the City of Eustis that the system or any portion of the system is inadequate to meet the needs of the public. Based on the foregoing, we find that the City of Eustis did not allege any specific facts (1) that it will suffer injury in fact of sufficient immediacy to be entitled to a hearing pursuant to Section 120.57, Florida Statutes, and (2) that the injury is of a type or nature which the proceeding is designed to protect. Therefore, we grant JJ's motion to dismiss the City of Eustis' objection.

#### Residents of the Country Club

The twenty-seven individuals who filed objections are customers of the Association, an exempt entity to whom JJ's provides bulk water and wastewater service. In their objections, these individuals allege that the utility presently does not have sufficient capacity to serve its total certificated area. To provide the capacity needed to serve its present territory and the requested amended territory, the utility will have to expand its plant. They say this would duplicate services readily available from the City of Mount Dora and result in increased rates and

charges. In addition, they allege that the present quality of service is unsatisfactory.

In its Motion to Dismiss, JJ's asserts that these individuals lack standing and cannot prove that they will be substantially affected by the requested amendment. JJ's further argues that these individuals should be dismissed based on our decision in Order No. 24245, issued March 18, 1991. In that Order, a customer, El Jobean, was dismissed based on our decision that an allegation of poor quality of service was not sufficient to establish standing in an amendment proceeding. In its response, OPC argues that these individuals are affected by the ability of JJ's to provide adequate water and wastewater service to their exempt entity as well as to the proposed expanded service territory.

We find that these individuals, although not customers of the utility, are substantially affected because any action affecting the utility's services or charges would also affect them as customers of the Association. Further, these individuals also raise the issue of duplication of service. Section 367.045 (5)(a), Florida Statutes, provides that we may not grant an amendment of a certificate of authorization for an extension of an existing system which will be in competition with, or duplication of, any other system. Therefore we find that we must consider the residents' objections on the basis of the possible duplication of systems. For this reason, we find these objections are distinguishable from the objection filed by El Jobean. Based on the foregoing, we deny JJ's Motion to Dismiss the residents of the Country Club of Mt. Dora.

#### City of Mt. Dora

It is JJ's position that the City of Mt. Dora, by its objection, is attempting to revisit an issue settled by City of Mount Dora v. JJ's Mobile Homes, Inc., 579 So.2d 219 (Fla. App. 5th Dist. 1991). In its response, the City of Mt. Dora states that the case cited by JJ's addressed only the issue of whether

a municipality had the absolute right to serve potential customers within its corporate limits regardless of the existence of certificated area encompassing those same potential customers.

The City further asserts that the court did not address the issue posed here which is whether the utility may expand its certificated

ORDER NO. PSC-93-0363-FOF-WS  
DOCKET NO. 921237-WS  
PAGE 4

territory into areas within the corporate limits of a municipality where the municipality is capable of readily serving. We find that the City of Mt. Dora case cited above is not dispositive of the issue of the City's standing in this matter. We also find that the City of Mt. Dora is a proper party to this proceeding based on its allegation that it has a system that may be duplicated if JJ's application is approved. Therefore, we deny JJ's Motion to Dismiss the City of Mt. Dora.

In reaching our decision, we have not relied on the City's argument that to have standing a governmental authority need not be substantially affected based on Section 120.52(12), Florida Statutes:

Based on the foregoing, JJ's Motion to Dismiss the City of Eustis is granted, however, JJ's Motion to Dismiss the City of Mt. Dora and the residents of the Country Club of Mt. Dora who objected is denied.

It is, therefore,

ORDERED by the Florida Public Service Commission that JJ's Mobile Homes, Inc.'s Motion to Dismiss the City of Mount Dora and the residents of the Country Club is denied. It is further

ORDERED that JJ's Mobile Homes, Inc.'s Motion to Dismiss the City of Eustis is granted and the City of Eustis is hereby dismissed.

By ORDER of the Florida Public Service Commission this 9th day of March, 1993.

---

STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

SLE

by: Kay Hagan  
Chief, Bureau of Records

ORDER NO. PSC-93-0363-FOF-WS  
DOCKET NO. 921237-WS  
PAGE 5

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: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. 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.