

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint and petition) DOCKET NO. 920649-WS
of Cynwyd Investments against)
TAMIAMI VILLAGE UTILITY, INC.)
regarding termination of water)
and wastewater services in Lee)
County.)
_____)
In Re: Complaint against) DOCKET NO. 930642-WS
TAMIAMI VILLAGE UTILITY, INC. by) ORDER NO. PSC-93-1469-PCO-WS
CYNWYD INVESTMENTS, and request) ISSUED: October 7, 1993
for emergency order requiring)
the utility to reestablish water)
and wastewater service to)
Cynwyd's Friendship Hall in Lee)
County.)
_____)

ORDER GRANTING STAFF'S MOTION TO
COMPEL PRODUCTION OF DOCUMENTS

On August 9 and 16, 1993, pursuant to Rule 1.350, Florida Rules of Civil Procedure, the Florida Public Service Commission (Commission) Staff served its Requests for Production of Documents Nos. 1 and 2 to Tamiami Village Utility, Inc. (TVU). The Staff requested that TVU furnish copies of all court orders, correspondence, and documents that involve Tamiami and the Department of Environmental Regulation (DER) along with any source documentation that supports TVU's charges for Cynwyd's unauthorized use of wastewater service at Friendship Hall.

On September 10, 1993, TVU, in its response to Staff's production requests, stated that Staff could inspect and duplicate the requested materials at its office in Fort Myers, Florida. TVU also stated that it would charge Staff the same fee that the Commission charges for its copies.

On September 28, 1993, the Staff filed a Motion to Compel Production of Documents by TVU. In its Motion to Compel, pursuant to Rules 1.350(b) and 1.380(2), Florida Rules of Civil Procedure, Staff asked that TVU be compelled to produce the requested documents. Staff asserts that utilities regulated by the Commission recover their discovery costs in the context of rate increase applications.

On October 1, 1993, the Commission received TVU's response to Staff's Motion to Compel Production of Documents. TVU, in its

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response, disputes the Staff's statement that regulated utilities recover their discovery costs through applications for rate increases. TVU states that the Commission has "arbitrarily and capriciously disallowed" TVU's legal fees and costs, and further, that "what Bell South or FPL do [sic] is totally irrelevant to TVU's situation." Further, TVU states that only a "party has any right at all to conduct discovery."

Pursuant to Rule 1.350(c), Florida Rules of Civil Procedure, Staff has the right to effect discovery via a request for production of documents. It is nonsensical to ask the Commission to "pay" the utility the costs of providing information to which the Commission is entitled and for which costs the utility itself would ultimately be responsible through its regulatory assessment fees. Upon review of the pleadings, the arguments, and the Florida Rules of Civil Procedure, TVU is ordered to produce the requested documents. Due to the short time left prior to the hearing in this matter, TVU shall produce these documents within five days of the issuance of this Order.

Based on the foregoing, it is therefore

ORDERED by Susan F. Clark, as Prehearing Officer, that Tamiami Village Utility, Inc., be ordered to produce the documents, requested in Staff's Production of Documents Nos. 1 and 2, within five days of the issuance of this order.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 7th day of October, 1993.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

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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: (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.