

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Grandfather)
Certificates to Provide Water and)
Wastewater Service in Polk County)
by Garden Grove Water Company, Inc.)

Docket No. 961299-WS
Filed: January 16, 1997

BOARD OF COUNTY COMMISSIONERS
OF POLK COUNTY'S MEMORANDUM IN OPPOSITION TO
EMMER DEVELOPMENT CORP.'S
MOTION TO DISMISS

The Board of County Commissioners of Polk County ("Polk County"), pursuant to Florida Administrative Code Rule 25-22.037(2) (b), submits this Memorandum in Opposition to Emmer Development Corp.'s Motion to Dismiss, and in support states the following.

1. Polk County has standing to participate in this proceeding.

Emmer Development Corp. (Emmer) argues that Polk County's petition fails to allege any injury that it is likely to suffer.

Paragraphs 19 and 20 of Polk County's petition clearly state the substantial interests that Polk County has in this proceeding are to ensure that its lawful orders are fully and faithfully executed in order to protect the health, convenience and welfare of its citizens. Polk County has standing to intervene in this proceeding because it is a political subdivision representing its citizens (the existing and future customers of Garden Grove) and these customers could be injured by the reversal of Polk County's June 11, 1996 Order.

The instant proceeding would not exist absent Polk County's adoption of its May 14, 1996 resolution transferring jurisdiction to the PSC. That resolution was adopted with the understanding -- and upon the express assurance of PSC Staff -- that Polk County would retain jurisdiction over matters before it at the time of adoption.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG 1
- LIN 5
- OPC _____
- RCH _____
- SEC 1
- WAS Golden
- OTH _____

Polk County has lawfully and fully adjudicated Emmer's request to exclude its property from Garden Grove's franchise area based on its powers relative to the health, convenience, and welfare of its citizens. Polk County determined that Garden Grove's customers could suffer injury if Garden Grove were not allowed to serve the Emmer property. Paragraph 4 of Polk County's June 11, 1996 Order states:

The Commission concludes and finds that the continued vitality of the Garden Grove utility and its ability to provide quality utility service to its other customers is dependent upon maintaining its customer base and the continued provision of utility service to its other customers might well be adversely prejudiced by exclusion of the Emmer development as a prospective customer.

Emmer and the City of Lake Wales should not be permitted to disregard this adjudication through a belated attempt at "forum-shopping."

2. Polk County's position is consistent with its own actions.

Emmer argues that Polk County is attempting to "reestablish" itself as a "co-regulator" of one private utility. This assertion utterly mischaracterizes Polk County's efforts to ensure that its prior, lawful adjudication is honored by the PSC. As stated in its petition, Polk County's jurisdiction and authority to adjudicate Emmer's request to exclude itself from Garden Grove's franchise area is a disputed issue of law in the instant proceeding.

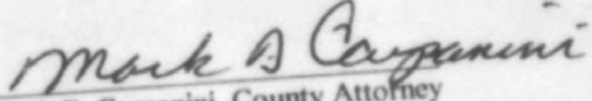
3. Polk County's position is tenable.

Emmer argues that Polk County cannot be an advocate for its citizens after it has acted in a quasi-judicial capacity, which Emmer states is "analogous to the unseemly spectacle of a trial judge determining that he does not have jurisdiction over a case before him and then, while still wearing his judicial robes, seeking to intervene before a subsequent court as an advocate on behalf of one of the litigants and arguing as part of his petition that he would personally be damaged if that court ruled

against his client." This fanciful analogy mischaracterizes Polk County's efforts in the instant proceeding, wherein after a case over which it properly exercised its jurisdiction, is attempting in a lawful manner to ensure that its Order is fully and faithfully executed on behalf of its citizens. Emmer's argument also ignores the history of this dispute where Emmer filed a Petition for Writ of Certiorari with the Circuit Court seeking review of Polk County's June 11, 1996 Order. In that proceeding, Polk County, after acting in a quasi-judicial capacity, filed a brief defending the decision it had rendered. At no time during that proceeding did Emmer assert that Polk County could not take an advocacy role to defend its June 11, 1996 Order.¹

In the instant proceeding, Polk County is seeking to intervene to again defend its June 11, 1996 Order. Polk County is taking an advocacy role on behalf of its citizens, the customers of Garden Grove, so that the instant proceeding will not cause injury to those customers.

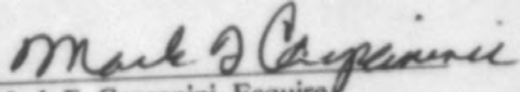
WHEREFORE, the Board of County Commissioners of Polk County respectfully requests that the Florida Public Service Commission deny Emmer Development Corp.'s Motion to Dismiss, and grant such other relief as the Commission deems appropriate.


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¹Nor, for that matter, did Emmer dispute Polk County's exercise of jurisdiction over Emmer's request to be excluded from Garden Grove's franchise area.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Claude R. Moulton, Esquire, General Counsel, Emmer Development Corp., 2801 S.W. Archer Road, Gainesville, FL 32608; D. Bruce May, Esquire, Holland & Knight, 315 South Calhoun Street, Suite 600, Tallahassee, Florida 32301; Kathleen M. Johnson, Esquire, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; Albert C. Galloway, Jr., Esquire, City Attorney, City of Lake Wales, P.O. Box 1260, Lake Wales, Florida 33859-1260; and to Wayne L. Schiefelbein, Esquire, Gatlin, Schiefelbein & Cowdery, P.A., 1709-D Mahan Drive, Tallahassee, Florida 32308, on this 16 day of January 1997.


Mark F. Carpanini, Esquire