

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Bayside Mobile Home Park)
against Bayside Utilities Services, Inc. regarding)
water and sewer service in an area within a)
territory assigned by the Commission)
_____)

DOCKET NO. 010726-WS

Filed: November 15, 2001

**BAYSIDE UTILITY SERVICES, INC.'S
RESPONSE AND MOTION TO DISMISS
THE DEVELOPER'S PETITIONS, PROTESTS AND REQUESTS FOR HEARING**

COMES NOW Bayside Utility Services, Inc. (hereinafter referred to as the "utility"), and in response to the documents filed by Bayside Mobile Home Park and styled, respectively, "Petition Filing a Formal Protest to the Proposed Agency Action By a Substantially Affected Party" (dated November 10, 2001), and "Petition to Amend Petition as Per Rule 28-106.202, Florida Administrative Code" (dated November 13, 2001), states that:

1. On or about May 10, 2001, Bayside Mobile Home Park filed a complaint in the form of a letter and styled "Formal Filing of A Protest". The complaint sought to compel Bayside Utility Services Inc. to install water and wastewater mains, lines and other facilities in its new development and thereby force the utility to assume part of the financial burden and risk for the developer's anticipated expansion within the utility's service territory.
2. As shown by the extensive pleadings and responses to data requests on file with the Public Service Commission, this matter has been thoroughly considered by the Commission, including mediation, the production of several responses to data requests, and the presentation of arguments on behalf of both the developer and the utility.

3. Previously, the mobile home development and the utility were owned by the same person. The utility was originally built to serve the existing mobile home park. In 1999, the developer sold the utility to Bayside Utility Services Inc., a wholly owned subsidiary of Utilities, Inc.

4. Subsequent to the sale and contrary to the law, the rules of the Commission, and legal precedent of many years standing, the developer now wants to impose on the new owner (and on all the existing utility customers the) cost of installing utility lines into an adjacent development which has been represented to include an additional 76 mobile home and single family residential lots.

5. Prior to May 10, 2001, when the developer filed the complaint with the Commission, the utility had met in mediation with the developer, with a Staff member of the Public Service Commission (Mr. Rendell) as mediator, but the matter could not be resolved. Discussions and correspondence between the developer and the utility had preceded the mediation, all to no avail. The developer does not seem to be willing to accept the fact that it is bound by the law, the rules, and legal precedent, just as everyone else is. The developer could have avoided placing itself in this situation by timely consulting an attorney or someone else familiar with the law on this subject.

6. The utility filed a response to the developer's complaint. The Public Service Commission Staff sent data requests to both the developer and the utility, and the developer and the utility both filed responses to the respective data requests. On August 23, 2001, the Staff filed its recommendation to be considered at the Commission Agenda Conference on September 4, 2001.

7. Not being satisfied with the Staff recommendation, the developer requested a deferral of the item from the scheduled agenda so that it could file an additional response.

The utility did not object, and the matter was deferred.

8. On or about August 30, 2001, the developer filed “Bayside Second Response to Staff’s First Data Request” containing seven narrative pages plus fourteen multi-page exhibits. On September 12, the utility filed its written response to the developer’s Second Response to Staff’s First Data Request. On September 12, 2001, the developer filed “Bayside Third Response to Staff’s First Data Request” containing three narrative pages plus one exhibit. There was nothing new in the developer’s Third Response, so the utility did not file a further response of its own.

9. After considering all the additional facts, assertions, and argument set forth in the additional filings by the developer, on September 20, 2001, the Commission Staff issued its amended recommendation to be considered at the Commission Agenda Conference on October 12. Although affected parties could appear and present additional information to the Commission, the developer did not so appear. After consideration of the matter, the Commission adopted the Staff recommendation, rendered its decision at that Agenda Conference on October 12, and issued its decision in Order No. PSC-10-2095-PAA-WS on October 22, 2001.

10. Still not being satisfied with the outcome, the developer filed a document styled “Petition Filing a Formal Protest to the Proposed Agency Action by a Substantially Affected Party.” The document was dated November 10, 2001. In it, the developer requested the following relief:

“ . . . BSMP here pleads with the Commissioners to grant BSMP, which ever of the following is allowed by law:

- 1) Mediation; Either binding or non binding but preferably binding.
- 2) Arbitration, binding on all parties including the PSC and The Commissioners.
- 3) Administrative Hearing, binding on all parties including the PSC and The Commissioners.

10. On or about November 13, 2001, the developer then filed its “Petition to Amend Petition as Per Rule 28-106.202 Florida Administrative Code.” Therein, the developer requested that the Commission “. . . refer this matter to the Division of Administrative Hearings and request that an administrative Law Judge be assigned to conduct the hearing . . .”

11. Copies of the two petitions are attached hereto as **Attachment A** and **Attachment B**, respectively.

12. Aside from the ability of an affected party to request a hearing, there are well established methods of testing the validity of a Commission decision, either by petition for reconsideration or by appeal. The developer has chosen to pursue neither of these methods or to have a hearing before the Commission. Instead, it wants to second-guess the Commission, make the Commission a respondent in a proceeding before DOAH to challenge the merits of its order on a subject which is imbued with the policy decisions which the Commission should be making, not a DOAH hearing officer. If the petitions are interpreted to request a hearing before the Public Service Commission itself, the documents fail to meet the requirements of such a request, and they should be denied due to insufficiency of the petitions for failure to contain the information required.

13. The petitions do not state what the specific basis is for the developer's request for action by the Commission. Is it a factual disagreement with the order? Is it a legal disagreement?

14. Although it is unclear what factual or legal basis there may be for the petitions, if the developer's disagreement is that the developer is substantially affected by the decision of the Public Service Commission's statement of policy that has not yet been adopted by rule, the petitions must fail. The developer quoted from Rule 25-30.520, F.A.C. that "It is the responsibility of the utility to provide service within its certificated territory . . ." The utility has not refused service to the developer, and in fact has sent to the developer a developer contract meeting the requirements of the applicable rules of the Commission, including Rule 25-30.520, F.A.C.

15. If the developer is asserting that the Commission's actions are based on policy not adopted by a rule, there are specific rules upon which the Commission's order were based. For example, Rule 25-30.585, F.A.C., sets out the parameters for establishing service availability charges for real estate developments. The rule requires that:

Subject to the limitation of Rules 25-30.580, service availability charges for real estate developments shall not be less than the cost of installing the water transmission and distribution facilities and sewer collection system and not more than the developer's hydraulic share of the total cost or the utility's facilities and the cost of installing the water transmission and distribution facilities and sewage collection system [Emphasis added.]

The foregoing rule refers to Rule 25-30-580, F.A.C., which sets guidelines for the minimum and maximum CIAC for the utility as a whole. As long as the charges imposed on the

development do not cause the CIAC level for the utility system to be in violation of guidelines, they meet the limitations of 25-30.580, F.A.C. The utility's percent CIAC is 4.5%, significantly less than the amount required by the Rules. An agreement that sets service availability charges that match the cost of the distribution facilities meets the requirement of Rule 25-30.585, F.A.C. and will improve the system's ratio of net CIAC to net plant from 4.5% to approximately 27%. All these matters were considered in the Staff Recommendation and in the Commission Order, and they are rules upon which the actions were taken. Therefore an argument challenging non-rule policy must fail. Furthermore, the petitions have not alleged matters required by Rule 28-106.201(2), F.A.C., most particularly, a statement of all disputed issues of material fact, a concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action, and a specific statement of the specific rules or statutes the petitioner contends require reversal or modification of the Commission's decision. Furthermore, the developer has ignored the rules upon which the Commission rendered its decision, and has cited no other statute, rule, or precedent contrary to the Commission's decision.

16. As additional grounds for dismissal, the Commission Order No. PSC-10-2095-PAA-WS was issued on October 22, 2001. On page 12 thereof under NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW, it states that:

The action proposed herein, except for the decision not to initiate an investigation into whether territory of Bayside Utility Services, Inc. should be deleted, is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this

order may file a petition for a formal proceeding in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 12, 2001. [Emphasis added.]

17. Although the Public Service Commission is studying the question of whether to permit filing by electronic means, during November, 2001, the Commission does not allow filing except by delivery of the original document to the Commission either by hand or by mail or by express mail. Filing of a document by facsimile or by other electronic means is not presently allowed.

18. The initial "Petition Filing a Formal Protest" sent to the utility's undersigned attorney carries a facsimile date of Nov 10 01 09:39a , but it was not received by the undersigned counsel until returning to work on Tuesday, November 13. It was not filed with the Public Service Commission until Tuesday, November 13. (See, Commission docket file.)

19. The "Petition to Amend Petition" sent to the utility's undersigned attorney carries a facsimile date of Nov 13 03 06:29p, and it was received by the undersigned counsel on Tuesday, November 13. As of Wednesday afternoon, November 14, it had not been filed with the Public Service Commission. (See, Commission docket file.)

20. Therefore, both the "Petition Filing a Formal Protest" and the "Petition to Amend Petition" were not timely filed.

21. Upon information and belief, the person who signed, filed and served both the developer's petitions is not an attorney, and in fact has failed in past proceedings in this

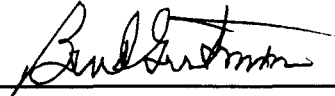
docket even to serve certain relevant pleadings and documents on the utility's attorney.

Although certain latitude may be granted a non-lawyer practitioner, it is believed that the person is not qualified by training or experience to practice law in Florida or to practice before this Commission.

WHEREFORE, Bayside Utility Services, Inc. responds to the two petitions filed by Bayside Mobile Home Park and requests that the Commission enter its order dismissing the two petitions and finding that:

- 1) both petitions are insufficient and fail to meet the content requirements of Rule 28-106.201. Both were so deficient that the failure to comply with those requirements is not *de minimus*, and there was no "substantial compliance" with the rule requirements;
- 2) both petitions fail to allege any factual or legal basis upon which the Commission either must or even may require a hearing or grant any other relief, must less refer the case to the Division of Administrative Hearings;
- 3) there is no requirement to refer this matter to any other tribunal for consideration;
- 4) there is no basis on which to make the Commission a party to this dispute or to make it a defendant or respondent in any action relating thereto;
- 5) both petitions were not timely filed;
- 6) both petitions should be dismissed; and
- 7) the Commission should retain jurisdiction to consider the award of any past or future attorney fees and costs to be paid by the developer and its owner to the utility if any further frivolous proceedings result from this matter.

RESPECTFULLY SUBMITTED, this 15st day of November, 2001.



Ben E. Girtman
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1020 E. Lafayette St.
Suite 207
Tallahassee, FL 32301

(850) 656-3232


Attorney for
Bayside Utility Services, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent to the following by U.S. mail or by hand delivery this 15st day of November, 2001.

Bayside Mobile Home Park
Attention: Dorothy Burton
6325 Big Daddy Drive
Panama City Beach, FL 32407

Ralph Jaeger, Esq.
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



Ben E. Girtman

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Bayside Mobile Home Park)
against Bayside Utility Services, Inc. regarding)
water and sewer service in an area within a)
territory assigned by the Commission)

DOCKET NO. 010726-WS
ORDER NO. PSC-01-2095-PAA-WS

DATE: NOVEMBER 10, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK AND
ADMINISTRATIVE SERVICES

FROM: BAYSIDE PARTNERSHIP d/b/a BAYSIDE MOBILE HOME PARK

**PETITION FILING A FORMAL PROTEST TO THE PROPOSED AGENCY ACTION
BY A SUBSTANTIALLY AFFECTED PARTY**

For the purposes of this petition, the following definitions will apply. Bayside Mobile Home Park shall be BSMP, Bayside Utility Services, Inc. shall be BUSI, The Florida Public Service Commission Staff shall be PSC, and the Florida Public Service Commissioners shall be The Commissioners.

THEREBY, BSMP hereby pleads with the Commissioners to grant to BMHP, which ever of the following is allowed by Law.

- 1) Mediation; Either binding or non binding but preferably binding.
- 2) Arbitration, binding on all parties including the PSC and The Commissioners.
- 3) Administrative Hearing, binding on all parties including the PSC and The Commissioners.

THE FPSC AND THE COMMISSIONERS has varied from Florida Law so dramatically in their proposed action that it without doubt calls for a further action and review by another Florida Tribunal, other that the Commission or the Commissioners. Rule 25-30.520, Florida Administrative Code, was completely ignored by the PSC and The Commissioners and as a fact should be the prevailing rule.

The PSC has indicated on several occasions and even in the Order say that the remedy for BMHP is to file an action in the Circuit Courts of Bay County, but in all other instances the Commission and The Commissioners are quick to indicate to anyone that They are the prevailing Tribunal, charged with the responsibility and authority to Regulate BUSI and BMHP in this matter.

The PSC and The Commissioners have hot been asked in this action or any action to determine the amount of the Service Availability Charge, yet they continue to quote rule 25-30.580 as the basis for the action sent forward for The Commissioners to vote on. This rule is the Guidelines for Designing

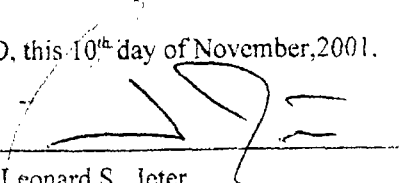


Service Availability Policy. BMHP states in the strongest of terms that the Service Availability Charges are not an issue in this action. The Service Availability Charges were determined years ago, recommended by the PSC and voted on and Approved by The Commissioners. They are set and rule 25-30.520 states clearly that "It is the responsibility of the utility to provide service within its certificated territory....."

BMHP has only asked that since The Commissioners claim to have jurisdiction in this matter that they as the Tribunal with the responsibility to enforce the laws concerning this matter, **DO SO**.

WHEREFORE, Bayside Mobile Home Park respectfully request the Commission and The Commissioners consider the above and grant the request of BMHP to make certain that Florida Law is applied in a the manner that it was intended.

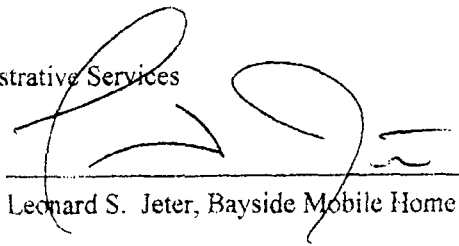
RESPECTFULLY SUBMITTED, this 10th day of November, 2001.



Leonard S. Jeter
Bayside Mobile Home Park
6325 Big Daddy Drive
Panama City Beach, Florida 32407
(850) 234-6668

I HEREBY CERTIFY that a copy of the foregoing has been sent to the following by
Telefax and U.S. Mail this 10th day of November, 2001.

Florida Public Service Commission
Director, Division of the Commission Clerk and Administrative Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



Leonard S. Jeter, Bayside Mobile Home Park

Also Telefaxed to Ralph Jaeger, Esq. and Ben E. Girtman, Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Bayside Mobile Home Park)
against Bayside Utility Services, Inc. regarding)
water and sewer service in an area within a)
territory assigned by the Commission)

DOCKET NO. 010726-WS
ORDER NO. PSC-01-2095-PAA-WS

DATE: NOVEMBER 13, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK AND
ADMINISTRATIVE SERVICES

FROM: BAYSIDE PARTNERSHIP d/b/a BAYSIDE MOBILE HOME PARK

**PETITION TO AMEND PETITION AS PER RULE 28-106.202
FLORIDA ADMINISTRATIVE CODE**

For the purposes of this petition, the following definitions shall apply. Bayside Mobile Home Park shall be BMHP, Bayside Utility Services, Inc. shall be BUSI, The Florida Public Service Commission Staff shall be PSC, and the Florida Public Service Commissioners shall be The Commissioners.

THEREBY, BMHP hereby respectfully request that the Commissioners as per **Rule 28-106.201(3) FLORIDA ADMINISTRATIVE CODE**, "refer this matter to the Division of Administrative Hearings and request that an Administrative Law Judge be assigned to conduct the hearing" as soon as possible.

BMHP also respectfully request that **RULE 28-106.207(1) FLORIDA ADMINISTRATIVE CODE** be adhered to, and we submit to the Commissioners that the Hearing should be set to be heard "in the area of residence of the of the non-governmental parties affected by agency action, or at the place most convenient to all parties....". We submit to you that that place is here in Panama City Beach, Florida, since both "non-governmental parties" are located here.

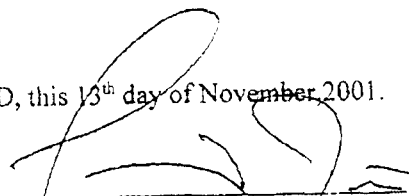
BMHP has only asked that since The Commissioners claim to have jurisdiction in this matter that they as the Tribunal with the responsibility to enforce the laws concerning this matter, **DO SO**.

WHEREFORE, Bayside Mobile Home Park respectfully request the Commission and The Commissioners consider the above request of **BMHP** to make certain that Florida Law is applied in the



manner that it was intended.

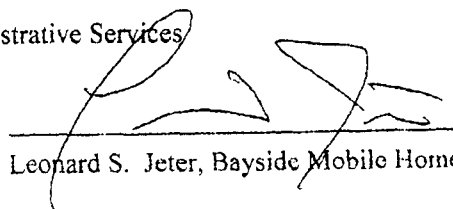
RESPECTFULLY SUBMITTED, this 13th day of November 2001.



Leonard S. Jeter
Bayside Mobile Home Park
6325 Big Daddy Drive
Panama City Beach, Florida 32407
(850) 234-6668

I HEREBY CERTIFY that a copy of the foregoing has been sent to the following by
Telefax and U.S. Mail this 13th day of November, 2001.

Florida Public Service Commission
Director, Division of the Commission Clerk and Administrative Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



Leonard S. Jeter, Bayside Mobile Home Park

Also Telefaxed to Ralph Jaeger, Esq. and Ben E. Girtman, Attorney