

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for Approval of a	)	DOCKET NO. 880596-SU
special service availability contract	)	ORDER NO.: 21908
Between GULF AIRE PROPERTIES d/b/a	)	ISSUED: 9-19-89
GULF AIRE WASTEWATER TREATMENT PLANT	)	
and C.M. PARKER and CECIL G. COSTIN,	)	
JR. in Gulf County	)	
	)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD  
BETTY EASLEY

ORDER GRANTING MOTION TO DISMISS

BY THE COMMISSION:

By Order No. 19435, issued as proposed agency action on June 6, 1988, this Commission approved a developer agreement between Gulf Aire Properties, Inc. d/b/a Gulf Aire Wastewater Treatment Plant (Gulf Aire) and C. M. Parker and Cecil G. Costin, Jr. (Developers), subject to certain modifications. This Commission also rejected a proposed agreement between Gulf Aire and the Developers for the lease of a Developer-installed wastewater collection system, modified Gulf Aire's service availability policy and approved a guaranteed revenue charge. In addition, by Order No. 19501, issued June 16, 1988, this Commission authorized Gulf Aire's collection of the guaranteed revenues on a temporary basis, subject to refund, in the event of a timely protest of Order No. 19435, and required Gulf Aire to file an escrow agreement for our approval.

On July 5, 1988, the Developers filed a timely protest to Order No. 19435. Subsequent to the Commission's receipt of the protest, Gulf Aire filed an escrow agreement for approval. The Staff of this Commission noted a number of deficiencies in the agreement and notified Gulf Aire thereof; however, Gulf Aire failed to cure these deficiencies in a timely manner.

On March 13, 1989, the Developers filed a motion for a continuance. The basis of the motion was that Mr. Costin is extremely ill and was not able to participate in this case under the then-current case schedule. The Developers, therefore, requested that this case be continued for eight months.

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On March 14, 1989, Gulf Aire filed a response to the Developers' motion for continuance along with a request for a motion hearing. In its response, Gulf Aire indicated that it had no specific objection to a continuance, subject to certain conditions. These conditions included the Developers' payment of all guaranteed revenues due and owing and their assurance that such revenues will be paid promptly in the future, the Developers' assurance that its collection system will be in good working order if and when contributed and this Commission's consideration of a motion to dismiss filed by Gulf Aire. A motion hearing was held regarding Developers' motion and Gulf Aire's response, before the Prehearing Officer, on April 17, 1989.

By Order No. 21291, issued May 26, 1989, the Prehearing Officer granted the Developers' motion for continuance, subject to their payment of the previously authorized temporary guaranteed revenue charges. The Prehearing Officer further conditioned Developers' payment of the guaranteed revenue charges upon Gulf Aire's curing the deficiencies found in its escrow agreement. On April 24, 1989, Gulf Aire submitted a revised escrow agreement, which was approved on May 2, 1989.

On June 26, 1989, Gulf Aire filed a motion to dismiss Developers' objection. In its motion, Gulf Aire outlined the history of this case, from the numerous delays and extensions to the most recent continuance. Gulf Aire argues that it has been ready to go to hearing on this matter since January, 1989. In addition, Gulf Aire stated that Developers have not as yet remitted any of their due and owing guaranteed revenues, in violation of Orders Nos. 19435, 19501 and 21291. Gulf Aire contends that the Developers should not be allowed to invoke the jurisdiction of this Commission, yet ignore its lawful orders. Gulf Aire, therefore, requests that we dismiss the Developers' objection.

Although we are sympathetic to Mr. Costin's condition, we believe that this case has gone unresolved for long enough. This Commission has issued three orders directing the Developers to pay the guaranteed revenue charges, each of which has gone unheeded. Further, we note that Gulf Aire is required to place all guaranteed revenues collected from Developers into escrow. The Developers are, thereby, fully protected should they prevail with their objection. The Developers' failure to

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pay the guaranteed revenues, however, could leave Gulf Aire without protection, such as in the event of Developers' declaring bankruptcy.

We do not believe that the Developer's should be allowed to invoke the jurisdiction of this Commission yet ignore our lawful orders. Accordingly, at the August 29, 1989 Agenda Conference, we informed the Developers that, unless they remitted all due and owing guaranteed revenues and informed the Staff of this Commission (Staff) thereof within twenty-four hours, we would grant Gulf Aire's motion. The Developers failed to so inform Staff. Gulf Aire's motion is, therefore, granted.

Further, since we have granted Gulf Aire's motion to dismiss, there are no outstanding protests to Order No. 19435 and the time within which to file a protest to that order has expired. Accordingly, we hereby revive the provisions of Order No. 19435 and declare that order to be final and effective.

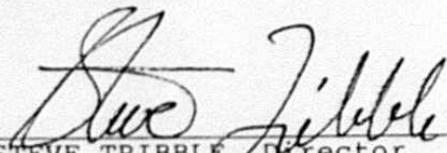
Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that Gulf Aire Wastewater Treatment Plant's motion to dismiss the protest of C. M. Parker and Cecil G. Costin is, hereby, granted. It is further

ORDERED that the provisions of Order No. 19435 are hereby revived and declared to be final and effective. It is further

ORDERED that, after the expiration of the time within which to file a motion for reconsideration and/or notice of appeal of this Order, Docket No. 880596-SU shall be closed.

By ORDER of the Florida Public Service Commission  
this 19th day of SEPTEMBER, 1989.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

RJP

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.