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plant is on, and the lines in Phase II to the Wilderness Home Owners Association (Association). On March 21, 1989, Poinciana filed a complaint against the developer in the Circuit Court of the Ninth Judicial Circuit, in and for Osceola County, Florida, Case No. 89-704.

There was evidence at the rate case hearing that during the test year Poinciana billed the customers in Phase I at the full rate. These customers apparently received line maintenance service. However, for three months during the test year, Poinciana also billed the customers in Phase II at the full rate when the Wilderness Home Owners Association had been operating and incurring expenses for the central plant and the lines in Phase II. Consequently, by Order No. 22166, we directed that a separate investigation docket be opened to determine who rendered what services to whom and to determine the propriety of show cause proceedings. The investigation docket was opened shortly thereafter and was assigned Docket No. 900217-WS.

By letter dated April 23, 1990, the Association requested exemption from Florida Public Service Commission regulation for the water treatment plant located in the development pursuant to Section 367.022(7), Florida Statutes, (nonprofit entities). The request was accompanied by an affidavit of the president of the Association, a copy of the Association's Articles of Incorporation, a copy of the Association's Bylaws, and a quit-claim deed by which the plant, the land upon which the plant is located, and the lines in Phase II were conveyed from the developer to the Association. Docket No. 900400-WU was opened to process the Association's request. On May 24, 1990, Poinciana filed in the exemption docket a Motion to Intervene and Consolidate. Poinciana requested that it be allowed to intervene in the exemption docket and that the exemption docket and the investigation docket be consolidated. On June 5, 1990, the Association filed a response to Poinciana's motion. The Association argued that Poinciana's motion should be denied and that the exemption request should be allowed to proceed. We will consider consolidation and intervention separately.

CONSOLIDATION

Rule 25-22.035(2), Florida Administrative Code, states:

Consolidation: If there are separate matters before the presiding officer which involve

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similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party. Any party to a proceeding may request that it be consolidated with proceedings, or the presiding officer may on his or her own initiative order separate proceedings to be consolidated.

In its Motion to Intervene and to Consolidate, Poinciana argues that the Commission's action in the exemption docket could be influenced by the result in the court litigation and that the Commission's action in the exemption docket will be affected by the Commission's action in the investigation docket. In other words, the determination made by the Circuit Court in the ownership dispute is the pivot upon which both the exemption and investigation dockets will turn.

In its response to Poinciana's motion, the Association argues that notwithstanding the presence of the litigation, the Association holds title to the plant and land by virtue of a quit-claim deed from the developer and, thus, the Association is entitled to an exemption for as long as it continues to own and operate the plant. Whether Poinciana is billing the Association's customers correctly and whether the Association is entitled to an exemption pursuant to statute are, the Association asserts, two distinct and separate issues.

We agree with Poinciana in that the court case is the pivot upon which the exemption and investigation questions will turn. Nevertheless, we do not believe that the circumstances of these cases meet the test of the consolidation rule. We find that the present situation involves neither like cases nor the same parties. Both cases depend on the same external factor, the decision of the Circuit Court, but this is clearly not one of the like cases situations contemplated by the consolidation rule. The issue of law involved here, ownership, is not an issue which this Commission can resolve. In addition, the parties in these two dockets are as different as the subject matters involved. It appears, then, that the essential requirement of the rule is not met. Also, it is unlikely that consolidation would promote administrative efficiency in this instance. Accordingly, we hereby deny the utility's motion as to consolidation.

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INTERVENTION

Poinciana requested intervention on the basis that it has an interest in the exemption docket by virtue of the ownership dispute. When the litigation over the disputed properties is settled, any interest Poinciana may have in the exemption docket will not necessarily cease. If the Court rules that Poinciana is the owner of all the disputed property, we could not grant the Association an exemption because the Association would not own the land and the facilities and thus not meet the exemption criteria. If the Association is found to be the lawful owner of all of the disputed property, then Poinciana will no longer have an interest in the exemption docket. However, should the litigation be resolved in such a manner that the disputed property is somehow divided, Poinciana will have an interest in the exemption docket. Since the substantial interests of Poinciana may be affected in the exemption decision, we hereby grant its motion as to intervention.

MONITOR STATUS OF DOCKETS

The Circuit Court's decision as to ownership of the disputed property is essential for the conclusion of both the exemption and investigation dockets. Since we cannot process the exemption docket until the court case is settled, we hereby place the exemption docket in monitor status until a final court resolution is reached. Furthermore, since so much of the investigation docket depends on who owns the facilities, the investigation docket is also placed in monitor status. So that we may be apprised of developments in the court case, Poinciana is hereby ordered to file a copy of all orders entered into in the Circuit Court case with this Commission.

ESCROW

Order No. 22166, issued on November 9, 1989, in Docket No. 881503-WS, required the utility to ". . . escrow all monthly service revenue and service availability charges collected from the customers in the Wilderness Development until the completion of the separately docketed investigation of that situation." We believe that placing the investigation docket into monitor status does not release the utility from its obligation to escrow the Wilderness Development revenue and charges. There is the possibility of a refund to these customers at the close of the investigation. Therefore, Poinciana is required to continue to escrow all monthly service

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revenue and service availability charges collected from customers in the Wilderness Development until the completion of Docket No. 900217-WS. Furthermore, we require the utility to provide the Commission by the 20th of each month a report indicating the monthly and total revenues collected from the Wilderness Development customers.

It is, therefore,

ORDERED by the Florida Public Service Commission that the Motion to Intervene and to Consolidate filed by Poinciana Utilities, Inc., in Docket No. 900400-WU is hereby denied in part and granted in part as set forth in the body of this Order. It is further

ORDERED that all parties shall furnish copies of any testimony, exhibits, pleadings and motions which may be hereinafter filed in Docket No. 900400-WU to B. Kenneth Gatlin, Gatlin, Woods, Carlson & Cowdery, 1709-D Mahan Drive, Tallahassee, Florida 32308, Attorney for Poinciana Utilities, Inc. It is further

ORDERED that Poinciana Utilities, Inc., shall file with this Commission copies of all orders entered by the Court in Case No. 89-704, Circuit Court of the Ninth Judicial Circuit, in and for Osceola County, Florida. It is further

ORDERED that Poinciana Utilities, Inc., shall escrow all service revenue and service availability charges collected from customers in the Wilderness Development until the completion of the investigation in Docket No. 900217-WS and shall on the 20th of each month provide Commission Staff with a monthly report of revenue and charges so collected.

By ORDER of the Florida Public Service Commission
 this 11th day of SEPTEMBER, 1990.

 STEVE TRIBBLE, Director
 Division of Records and Reporting

(S E A L)

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by: Kay Ferguson
 Chief, Bureau of Records

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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 sewer 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.