

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of SUNRAY UTILITIES,)	DOCKET NO. 870539-WS
INC. for water and sewer certificates in)	ORDER NO. 24093
St. Johns County, Florida)	ISSUED: 2/12/91
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH
 MICHAEL McK. WILSON

ORDER DENYING SUNRAY'S MOTION TO DISMISS
CORDELE PROPERTIES, INC., AND FOR SUMMARY JUDGMENT

BY THE COMMISSION:

On August 10, 1990, we issued proposed agency action Order No. 23341 establishing initial rates and charges for Sunray Utilities, Inc., (Sunray or the Utility), a newly certificated water and sewer utility in St. Johns County. On August 30, 1990, Cimarrone Property Owners Association (Cimarrone) and Cordele Properties, Inc. (Cordele), the developer of the Cimarrone Project, filed a joint protest to Order No. 23341. On September 24, 1990, Sunray filed a Motion to Dismiss Cordele Properties, Inc., (or to Deny Request for Hearing) and for Summary Judgment.

Cimarrone and Cordele's protest alleges that they are currently Sunray's only customers in St. Johns County and that Cimarrone will continue to be Sunray's largest customer in St. Johns County well into the future. The rates and charges set forth by this Commission in Order No. 23341 will be paid by Cimarrone. Cordele is the developer of the Cimarrone community and therefore, Cordele asserts, the rates and charges set out in Order No. 23341 will directly affect Cordele's substantial interests. Therefore, Cordele and Cimarrone assert they have standing to file this protest.

Cimarrone and Cordele's position is that the Allowance for Funds Prudently Invested (AFPI) Charges and the Guaranteed Revenue Charges (GRCs) set forth in Order No. 23341 are contrary to those they had agreed to with Sunray early on. Cimarrone and Cordele state that the CIAC tax gross-up approved for Sunray is contrary to this Commission's recently adopted policy on that issue and that the AFPI and GRC charges in Order No. 23341 are improper and not in the public interest. They also allege that the rates approved for implementation by Sunray for Cimarrone are based on the total equivalent residential connections (ERCs) behind the Cimarrone

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master meter and that this constitutes a deviation from our past practice. The protest also identified numerous specific disputed issues of material fact, among which are the calculation and the appropriateness of the AFPI and GRC charges, the intent of the parties to the Utility Service Agreement and the Guarantee Agreement, the accuracy of the cost of service reflected in the proposed rate design, the additional tax liability, if any, resulting from the Utility's collection of CIAC, and the appropriateness of the method we utilized for the billing of ERCs behind Cimarrone's master meter.

Sunray's motion to dismiss and for summary judgment states that we should dismiss Cordele from this proceeding because of its lack of standing, and grant Sunray summary judgment on all of the issues raised by Cimarrone in its protest. The basis for Sunray's motion to dismiss Cordele for lack of standing is that Cordele is a developer and not a customer of the Utility. Sunray asserts that Cordele has not demonstrated that its substantial interests will be affected by Order No. 23341 or by the outcome of this proceeding. It is Sunray's position that Cordele has not met the two-prong test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981) (Agrico). Agrico states that for a protestant to have standing he must demonstrate that he will suffer injury in fact of sufficient immediacy to entitle him to a Section 120.57 hearing and that his injury will be of a type or nature which the proceeding is designed to protect. Sunray cites various cases which discuss the "zone of interest" concept--that is whether an alleged injury is within the "zone of interest" that the agency proceeding is intended to address.

Cordele and Cimarrone's responsive memorandum asserts that Cordele is a customer of Sunray because it receives spray irrigation service and will continue to receive this service from the Utility under tariff in the future. Cordele states, in addition, that Sunray should be estopped from challenging Cordele's standing because Cordele reasonably relied on Sunray's representations regarding the total amount of capacity availability charges it would have to pay for service to the Cimarrone community which influenced Cordele's decision to forego constructing and operating its own water and sewer system. Cordele states that it is already a party to this docket because it has already intervened and put on testimony at the hearings held in February 1988. Cordele asserts that it meets the Agrico standing test because this Commission is empowered to protect the public from utility abuses of monopoly power and that, therefore, Cordele's alleged injury is within the "zone of interest" protected by Chapter 367, Florida Statutes. Cordele also states that it will suffer immediate economic injury amounting to thousands of dollars each month if Sunray is permitted to collect GRCs and AFPI charges for lots in Cimarrone at Cartwheel Bay. Finally, Cordele states that no

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prejudice to Sunray would result from Cordele's participation in this proceeding.

We find that Cordele Properties, Inc., does have standing to participate in this proceeding because it has demonstrated that its substantial interests will be affected by the decision made by this Commission. It has demonstrated that it will suffer an injury of sufficient immediacy and well within the "zone of interests" that this agency is mandated to regulate. Cordele has asserted that it is a customer of Sunray and that the rates and charges set by Order No. 23341 and as a result of this proceeding will have a definite and immediate economic impact on it.

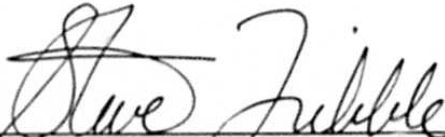
We also find it appropriate to deny Sunray's motion for summary judgment because the protest raises numerous material issues of fact and questions the appropriateness of the rates and charges in Order No. 23441. Sunray's assertion that this Commission has the authority and power to alter prior service availability contractual arrangements if it finds it within the public interest to do so is completely accurate. It is the appropriateness of the rates and charges set by Order No. 23341 that we believe Cordele and Cimarrone have placed at issue, not the authority of this Commission to set rates and charges that it finds appropriate. Therefore, we deny Sunray's motion for summary judgment. This matter is hereby set for hearing.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Sunray Utilities, Inc.'s Motion to Dismiss Cordele Properties, Inc., and for Summary Judgment is hereby denied as set forth in the body of this Order. It is further

ORDERED that this matter is hereby set for hearing.

By ORDER of the Florida Public Service Commission, this 12th day of FEBRUARY, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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.