

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint and petition) DOCKET NO. 920649-WS
of Cynwyd Investments against) ORDER NO. PSC-93-1243-PCO-WS
Tamiami Village Utility, Inc.) ISSUED: August 26, 1993
regarding termination of water)
and wastewater services in Lee)
County.)
_____)

ORDER GRANTING MOTION TO COMPEL

On April 28, 1993, Cynwyd Investments (Cynwyd) filed a Motion to Compel against Tamiami Village Utility, Inc., (TVU) with the Public Service Commission (Commission or PSC). In its motion, filed pursuant to Rule 25-22.034 and Florida Rules of Civil Procedure 1.340, Cynwyd states that on October 12, 1993, it served TVU with its First Set of Interrogatories Nos. 1-9. TVU served its responses on Cynwyd on November 5, 1992. However, Cynwyd states that TVU failed to adequately answer the interrogatories as requested. Specifically, Cynwyd states that TVU's responses to Interrogatories Nos. 4-9 were "...inadequate and/or nonresponsive."

In addition, Cynwyd states that it has requested the information because TVU has asserted that Cynwyd is responsible for maintaining sewer pipes and lines that TVU claims are the cause of infiltration into TVU's system. In order to determine whether Cynwyd has the responsibility to maintain the pipes and lines as asserted by TVU, Cynwyd has requested specific information concerning the issue of ownership and physical location of the pipes, lines, and related facilities, as well as any pertinent information that has led TVU to believe that infiltration of its systems is proximately caused by the poor condition of the pipes and lines alleged to be on Cynwyd's property.

However, instead of responding to the above questions with specific answers as requested, TVU's response stated that Cynwyd is responsible for providing all needed maintenance to the pipes and lines in question because "...[u]nder the tariffs the responsibilities of the parties is fixed at the Point-of-Delivery, irrespective of ownership."

Also, by Interrogatory No. 7, Cynwyd requested specific information concerning TVU's determination that Cynwyd's pipes, lines, or related facilities have discharged storm water, surface water, and ground water into TVU's system. TVU's complete response consisted of the following, "[V]isual observation reconfirmed by

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ORDER NO. PSC-93-1243-PCO-WS
DOCKET NO. 920649-WS
PAGE 2

measurements at the plant." Tamiami's response was clearly inadequate. Tamiami failed to explain when, where, or how the observation was performed or accomplished, as requested by Cynwyd. In order to appropriately respond to Cynwyd's request, specific information, such as who conducted the inspection, the date of the inspection, along with the method or procedure used to make the inspection should be provided.

At best, TVU's responses appear to be evasive and uncooperative. In addition, Tamiami did not file a response to Cynwyd's Motion to Compel. Therefore, TVU shall respond fully and adequately to Cynwyd's interrogatories on or before September 17, 1993.

Based on the foregoing, it is, therefore,

ORDERED by Susan F. Clark, as Prehearing Officer, that Cynwyd Investments Motion to Compel is hereby granted. It is further

ORDERED that Tamiami Village Utility, Inc., shall respond fully and adequately to Interrogatories Nos. 4-9 as requested by Cynwyd Investments on or before September 17, 1993.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 26th day of August, 1993.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

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ORDER NO. PSC-93-1243-PCO-WS
DOCKET NO. 920649-WS
PAGE 3

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 wastewater 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.