

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 921237-WS
Amendment of Certificate Nos.) ORDER NO. PSC-93-1672-PCO-WS
298-W and 248-S in Lake County) ISSUED: 11/17/93
by JJ'S MOBILE HOMES, INC.)
_____)

ORDER DENYING JJ'S MOBILE HOMES'
MOTION FOR PROTECTIVE ORDER

On November 9, 1993, the Office of Public Counsel (OPC) served a Notice of Taking Deposition with Subpoena Duces Tecum upon Jordan W. Hypes, president of JJ's Mobile Homes (JJ's), through Mr. Hypes' legal counsel. Mr. Hypes was subpoenaed to appear for deposition at 1:00 p.m. on November 16, 1993, in Mt. Dora, Florida. The subpoena also included an attachment which listed four items Mr. Hypes was required to produce at the deposition.

On November 12, 1993, JJ's filed a Motion for Protective Order and Motion to Quash. JJ's motion raises objections to the timeliness of the subpoena duces tecum, the length of time given to produce the documents, and the nature of the specific documents requested. The motion states that Mr. Hypes will be available for the scheduled deposition on November 16, 1993, but will not produce the requested documents unless ordered to do so.

Having reviewed the arguments in the utility's motion, I hereby deny the motion as set forth below.

JJ's first points out that the notice of taking deposition was served by OPC in the late afternoon of November 9, 1993. Because the deposition was scheduled for one week following the notice, and because of the intervening absence of JJ's counsel and a federal holiday (Veterans Day), JJ's claims that it has not been given adequate time to respond to the subpoena.

A party who wishes to take a deposition by oral examination must give "reasonable notice in writing to every other party to the action." Rule 1.310, Fla. R. Civ. P. There is no statutory definition of the term "reasonable notice". The standard must be applied to the circumstances in each case. In this docket, given the current calendar, the situation of the parties, and the nature of the documents requested, I find that OPC has given JJ's reasonable notice in its November 9, 1993 subpoena.

JJ's primary opposition to the subpoena concerns the time limits imposed by the Florida Rules of Civil Procedure. JJ's claims that because a party served with a request for production

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pursuant to Rule 1.350, Fla. R. Civ. P. must answer within 30 days of the request, OPC cannot shorten this time period by serving a subpoena duces tecum which requests materials within seven days.

OPC has not filed a request for production of documents under Rule 1.350. It has instead served a lawfully issued subpoena duces tecum for deposition provided for under Rule 1.310 and Rule 1.410. These rules allow for the issuance of a subpoena duces tecum upon any person in order to require the person to produce requested documents for inspection or copying at the deposition.

The utility has cited Rule 1.350(b)(5) to support its position that OPC must give it 30 days to produce the documents. Rule 1.310(b)(5) states that:

The notice to a party deponent may be accompanied by a request made in compliance with rule 1.350 for the production of documents and tangible things at the taking of the deposition. The procedures of rule 1.350 shall apply to the request. (Emphasis added).

While this provision allows a party to include a request for production along with the subpoena, the production request is not mandatory. Given the discretionary language of Rule 1.310(b)(5), it follows that if OPC does not include a request for production with its subpoena duces tecum, the procedures attached to Rule 1.350 do not apply.

JJ's cites Trawick, Florida Practice and Procedure, § 16.5 at p. 255, for the proposition that if a party is served a subpoena duces tecum and a request for production, the time limit must be taken into account. That argument would be applicable to this situation if OPC had couched its request in the form of a request for production served upon JJ's. But, as noted above, OPC has subpoenaed the president of JJ's Mobile Homes and requested that he produce certain documents related to the operation of the utility. OPC did not file a request for production with its subpoena.

The rules of discovery permit many methods of obtaining information. OPC has utilized one legitimate form of discovery. We cannot preclude OPC from serving a subpoena duces tecum by requiring them to use the method that will provide the utility the most amount of time to respond. In Florida Civil Practice Before Trial, §16.24 at p. 446, the authors note that "[i]f time is a

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factor, therefore, the procedure allowed by 1.310(b)(5) and 1.350 would be abandoned in favor of a notice accompanied by a subpoena duces tecum under 1.410(d)(1)". This is especially relevant as the deadline for discovery is three weeks from today.

The utility has also raised specific objections to each of the four items listed for production by OPC. In reviewing JJ's objections, I find that each of OPC's requests is relevant and appears reasonably calculated to lead to the discovery of admissible evidence, in accordance with Rule 1.280, Fla. R. Civ. P. Although some of the categories may be broad, the requests are within the permissible boundaries of discovery. I further find that the objections due to relevance, privilege, work product, vagueness, or availability are not well-founded. Therefore, JJ's motion fails on those grounds.

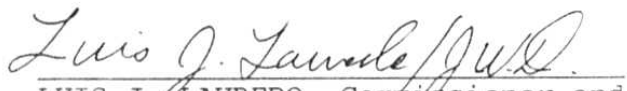
Mr. Hypes was also served with a subpoena duces tecum for Docket No. 930726-WS. That subpoena is scheduled for the same date, time and location in this docket. Although it has not referenced that docket number in the case style, JJ's has asked for relief in both dockets in the body of its motion. This order shall dispose of JJ's motion for both subpoenas due to the identical nature of the parties and the documents involved.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Luis J. Lauredo, as Prehearing Officer, that the Motion for Protective Order and Motion to Quash filed by JJ's is hereby denied as set forth in the body of this Order. It is further

ORDERED that JJ's Mobile Homes shall comply with the terms of the subpoenas in Dockets No. 921237-WS and 930726-WS, issued on November 9, 1993. It is further

By ORDER of Commissioner Luis J. Lauredo, as Prehearing Officer, this 16th day of November, 1993.



LUIS J. LAUREDO, Commissioner and
Prehearing Officer

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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 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.