

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of George ) DOCKET NO. 930726-WS  
Wimpey of Florida, Inc., d/b/a ) ORDER NO. PSC-94-0272-FOF-WS  
Morrison Homes against JJ'S ) ISSUED: March 9, 1994  
MOBILE HOMES, INC. regarding )  
provision of service in Lake )  
County. )

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The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
DIANE K. KIESLING  
LUIS J. LAUREDO

ORDER INITIATING INVESTIGATION AND CONSOLIDATING  
INVESTIGATION WITH DOCKET NO. 921237-WS

AND

NOTICE OF PROPOSED AGENCY ACTION ORDER DISMISSING COMPLAINT

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission that the action discussed herein, except for the initiation of an investigation and consolidation of that docket with Docket No. 921237-WS, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

JJ's Mobile Homes, Inc. (JJ's or the utility) provides water and wastewater services to The Country Club of Mt. Dora (country club or development), a residential community developed by George Wimpey of Florida, Inc., d/b/a Morrison Homes (Wimpey or the developer), with a planned build-out of 780 single family residences.

On June 4, 1993, the developer sent the utility an application for extension of service to Phase II.2 of the country club. On July 8, 1993, the utility responded to the request for service by

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stating that the utility's engineer had several questions about the developer's proposal. The utility noted in its response that it would move forward with an agreement for provision of service when the questions were satisfactorily addressed. On July 22, 1993, Wimpey filed an Emergency Complaint with the Commission, seeking an order to direct the utility to provide permanent service and to show cause that the utility can provide service to planned development in the country club. The utility filed a timely response on August 16, 1993.

In recent years JJ's and Wimpey have been involved in several proceedings before the Commission. On January 2, 1991, Wimpey filed an emergency complaint alleging that JJ's had failed to provide service. In that docket (Docket No. 910008-WS), we issued an order on April 22, 1991, directing JJ's to provide service to the developer. On September 16, 1991, Wimpey filed a complaint similar to the complaint at issue in this docket. In the September 1991 complaint (Docket No. 910956-WS), we issued Order No. PSC-92-0778-FOF-WS, which approved a permanent service agreement between the parties.

In a docket currently before the Commission, (Docket No. 921237-WS), JJ's has applied for amendment of its certificated territory. Several homeowners and the Office of Public Counsel (OPC) filed objections to the application. The objections included concerns about JJ's ability to serve the territory and capacity to expand its facilities. On December 1, 1993, by Order No. PSC-93-1724-PCO-WS, the Prehearing Officer granted Staff's motion to join Wimpey as an indispensable party. That same order granted a motion to continue the controlling dates and placed the case in abeyance until March 1, 1994. A tentative date of July 13-14, 1994 has been set aside for the formal hearing in that matter.

#### WIMPEY'S EMERGENCY COMPLAINT

Wimpey's Emergency Complaint, filed on July 22, 1993, alleged that JJ's did not possess signed Department of Environmental Protection (DEP) permits; that JJ's did not have the capacity to serve its certificated territory; that JJ's misrepresented its ability to provide service; that the utility did not act in good faith; that the utility collected CIAC funds with no intent of expansion; and that JJ's failed to comply with Rule 25-30.530, Florida Administrative Code, in that JJ's did not notify the developer whether service can be provided. Wimpey claimed that the

utility's actions were in contravention of its service agreement and were designed to interfere with the orderly progression of the development. Wimpey further stated that the disruption of water and sewer service would impose a financial hardship, delays, and irreparable harm.

The petition sought "a full and unencumbered review of JJ's Mobile Homes, Inc.'s ability to provide services to the entire development and certificated territory." More specifically, Wimpey requested that the Commission enter an order 1) directing JJ's to immediately enter into a permanent service agreement and order that the CIAC and gross-up charges be deferred until the utility proves it has the capacity to serve the entire development; and 2) enter an order to show cause why the utility should not be required to provide the construction schedule for expansion to accommodate the service needs of the development. Wimpey also requested that the Commission schedule a hearing within 30 days to assess JJ's compliance with any order issued in this docket and impose sanctions or penalties, including deletion of the development from JJ's certificated territory, if the utility has not complied with the order.

In its timely response, JJ's stated that it had continuously acted in good faith and had no obligation to provide expansion plans but must simply provide capacity to the territory as it is needed pursuant to DEP's rules and regulations regarding water and wastewater systems. JJ's alleged that it had signed the DEP permits and had every intention of drafting a proposed service agreement after the engineering questions were answered. The utility denied that it had attempted to impede the progress of the developer's construction. JJ's claimed that its July 8, 1993 response contains questions essential to the proper design and operation of the facilities. JJ's responded to the developer's allegations of fraud and bad faith by stating that the allegations were broad and unsupported, and that the developer was engaging in bad faith by attempting to relitigate issues already decided by this Commission and the 5th Judicial Circuit. Finally, the utility claimed that it would not be prudent to commit to the construction of capacity to serve the entire project without a binding commitment for service from the developer.

In its affirmative defense, JJ's requested that the Commission deny the relief requested by the developer, dismiss the complaint, and impose sanctions on the grounds that the developer filed the complaint for the purpose of harassment.

Although the complaint was captioned as an emergency, we find that the developer failed to show that an emergency condition existed. There was no disruption of service, nor did the utility refuse to provide service to any customers. There were no allegations of an immediate threat of harm to the developer's health, safety or welfare. JJ's and Wimpey were engaged in negotiations for service to a planned section of the country club, and have continued to negotiate throughout the pendency of this complaint. While the parties continue to negotiate for service, we find no violation of Commission rules regarding application for service.

As a basis for relief, the developer alleged that the utility violated Rule 25-30.530, Florida Administrative Code, by failing to respond to the developer's application for extension of service. Rule 25-30.525, Florida Administrative Code, requires that the applicant for service provide several key documents to the utility in order for the utility to assess the service request. The utility's July 8, 1993, response was not a refusal of those services, but was instead a request for further information as detailed by the utility's engineer.

With regard to other allegations raised by Wimpey, the utility has met, and continues to meet, DEP rules and regulations. The developer's allegations of a scheme to collect CIAC funds was not supported, as JJ's has collected the service availability charges authorized by the Commission. We have not determined the good faith or bad faith intentions of the parties. As evidenced by the complaints filed by the developer in previous dockets, the parties have a long history of disputes before the Commission.

The developer also alleged that the utility misrepresented its ability to serve its certificated territory to this Commission and the courts, and that the utility acted in bad faith by not expanding to provide services. The utility has already provided a second well, pumping capacity, upgraded electrical controls, upgraded the chlorine control system and provided an auxiliary electric generation system, thereby at least doubling its capacity and providing necessary redundancy pursuant to DEP rules and regulations. Wimpey did not present specific documentation that the utility will not be able to expand its facilities to meet the needs of the territory as alleged in its complaint.

We find it appropriate to deny the relief sought in Wimpey's complaint. The developer did not demonstrate a sufficient basis to

issue a show cause order requiring the utility to provide a construction schedule. Furthermore, deferring CIAC payments to the utility is inappropriate in any circumstance. If the developer desires that the utility commit itself to the full project of 780 units, then the developer must pay the appropriate service availability charges and gross-up fees. In the meantime, JJ's has not refused to provide service to its existing customers, nor has it refused to negotiate for a further service agreement.

There is no precedent which would indicate that ordering the utility to prove its ability to serve or expand its system without assurances from the developer that the project will grow to its planned build-out is prudent or even allowed under law. Therefore, the developer's request that the Commission require JJ's to do this is denied.

The parties are currently negotiating a service agreement for Phase II.2, the primary territory at issue in the complaint. This complaint arose during a stage of negotiations when the developer and utility reached a disagreement concerning the specifications and details of Phase II.2. In the meantime, we find that the emergency complaint filed by Wimpey is, at best, premature. The developer is certainly not precluded from filing a complaint at a later date if such an action becomes appropriate as a result of an actual denial of service.

For the grounds set forth above, the request for relief filed by George Wimpey of Florida, Inc., is denied and the emergency complaint dismissed. JJ's request for sanctions against Wimpey is also denied.

Unless a timely protest to the proposed agency action order is filed, there will be no further action required in this docket and it shall be closed.

INITIATION OF INVESTIGATION INTO JJ'S MOBILE HOMES'  
CAPACITY TO SERVE ITS TERRITORY

At our February 1, 1994, Agenda Conference we addressed the emergency complaint filed by Wimpey. During the course of the discussion of the item, it became apparent that there were other concerns outside of the scope of the developer's complaint in this docket. These issues were addressed by the developer, a resident of the County Club of Mt. Dora, and Public Counsel. These individuals raised concerns about the quality of the service,

price, rate structure, the bulk service provided through the homeowners association, water pressure, the City of Mt. Dora's ability to serve the territory, JJ's ability to serve the entire development, and the financial aspects of the expansion necessary to provide service to the development.

As noted herein, a number of the issues raised in Wimpey's complaint and by the parties at the Agenda Conference have been raised in Docket No. 921237-WS. Docket No. 921237-WS concerns the amendment of a portion of the utility's territory in order to serve the entire Country Club of Mt. Dora. However, while issues such as ability to serve are a concern in that docket, they only relate to the piece of territory requested in the application to amend. In order to fully address the concerns raised at the Agenda Conference, a more expansive review is needed of the entire certificated territory.

After hearing discussion on these issues, we decided to open an investigation docket to determine whether the utility's territory, or a portion of the utility's territory, should be deleted. We further determined that the investigation should be combined with the utility's request to add territory in Docket No. 921237-WS. The consolidation of the two dockets would be in compliance with the requirements of Rule 25-22.035(2), Florida Administrative Code, in that both dockets involve similar issues of fact and law and similar parties, and would promote the just, speedy, and inexpensive resolution of the proceeding without prejudicing any party.

We, therefore, find it appropriate to initiate an investigation to review JJ's Mobile Homes, Inc.'s ability to provide services to its entire certificated territory, including the development known as the County Club of Mt. Dora. Because the issues raised in this investigation are similar to the issues in Docket No. 921237-WS, which is tentatively set for hearing on July 13-14, 1994, in Mt. Dora, Florida, it is appropriate to consolidate the investigation docket with Docket No. 921237-WS for hearing.

It is, therefore,

ORDERED by the Florida Public Service Commission that the emergency complaint filed by George Wimpey of Florida, Inc., d/b/a Morrison Homes against JJ's Mobile Homes, Inc., is hereby dismissed in its entirety. It is further

ORDER NO. PSC-94-0272-FOF-WS  
DOCKET NO. 930726-WS  
PAGE 7

ORDERED that an investigation of JJ's Mobile Homes, Inc.'s ability to serve its entire certificated territory shall be initiated. It is further

ORDERED that the scope of the investigation shall be in accordance with the concerns set forth in this Order. It is further

ORDERED that the investigation docket shall be consolidated with Docket No. 921237-WS for the purpose of conducting the administrative hearing. It is further

ORDERED that the provisions of this Order, except for the initiation of the investigation docket and the consolidation of the investigation with Docket No. 921237-WS, are issued as proposed agency action and shall become final unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 E. Gaines Street, Tallahassee, Florida, 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that unless a timely protest to the proposed agency action order is filed, there will be no further action required in this docket and this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 9th day of March, 1994.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MEO

by: Kay Flynn  
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Chief, Bureau of Records

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.

As identified in the body of this order, our action herein, except for the initiation of an investigation and the consolidation of the investigation with Docket No. 921237-WS, is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 30, 1994. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.



ORDER NO. PSC-94-0272-FOF-WS  
DOCKET NO. 930726-WS  
PAGE 9

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 wastewater 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.