

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Amendment of Certificates Nos. 298-W and 248-S in Lake County by JJ'S MOBILE HOMES, INC.)	DOCKET NO. 921237-WS
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In Re: Investigation Into Provision of Water and Wastewater Service by JJ'S MOBILE HOMES, INC. to its Certificated Territory in Lake County.)	DOCKET NO. 940264-WS ORDER NO. PSC-94-1563-PCO-WS ISSUED: December 15, 1994

ORDER DISPOSING OF MOTIONS

This Order addresses Office of Public Counsel's (OPC) Motion for Reconsideration of Order Granting Continuance and Requiring Status Reports, and OPC's Motion for Reconsideration of Order Denying Discovery of Attorney Work Product from a Testifying Expert, Public Counsel's Request for Oral Argument. Each motion is discussed separately below.

Public Counsel's Motion for Reconsideration of Order Denying
Discovery of Attorney Work Product from a Testifying
Expert, its Motion for Oral Argument, and JJ's
Motion to Toll Time

On September 13, 1994, JJ's Mobile Homes, Inc. (JJ's) took the deposition of Mr. James Collier, a witness JJ's intended to present at hearing. Because Mr. Collier resides in Arkansas, the deposition was conducted by telephone. During the deposition, OPC requested that Mr. Collier identify and disclose the information he received from JJ's attorneys in preparation for the deposition. JJ's objected on the grounds that the information was protected as attorney work product. On September 20, 1994, OPC filed a Motion to Compel Answers to Deposition Questions and Production of Documents Referred to at Deposition. JJ's filed a timely response to the motion.

Order No. PSC-94-1334-PCO-WS, issued October 31, 1994, denied OPC's motion to compel answers and production of documents. The Order addressed whether materials containing an attorney's mental impressions were discoverable, even if they were conveyed to an expert witness during the course of preparation for deposition.

On November 8, 1994, OPC filed a timely Motion for Reconsideration, pursuant to Rule 25-22.060, Florida Administrative Code, and a Request for Oral Argument, pursuant to Rule 25-22.058, Florida Administrative Code. JJ's responded to OPC's motion by filing a Motion to Toll Time on November 10, 1994. Subsequently,

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OPC filed a Response to Motion to Toll Time on November 18, 1994. These related motions are addressed below.

Oral Argument

OPC's motion for reconsideration requests oral argument. The motion contains sufficient argument for the purpose of rendering a fair and complete evaluation of the merits without oral argument. Therefore, OPC's request for oral argument is hereby denied.

Motion for Reconsideration

OPC states in its motion for reconsideration that Order No. PSC-94-1334-PCO-WS "mistakenly assumes that work product considerations under Rule 1.280(b)(3), Florida Rules of Civil Procedure, control in matters of discovery from a testifying expert witness." OPC also argues that the order is based on an incorrect interpretation of the discovery rules.

The purpose of a motion for reconsideration is to point out some matter of law or fact which the Commission failed to consider or overlooked in its prior decision. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). A motion for reconsideration is not an appropriate vehicle for mere reargument or to introduce new evidence or arguments which were not previously considered.

Although OPC states that a mistake was made, OPC has in actuality taken issue with the Commission's interpretation of a particular rule. (emphasis added) In its motion for reconsideration, OPC has attempted to reargue its original motion. Reconsideration is not the appropriate vehicle to reargue a point or argue with a ruling. The purpose of such a motion is merely to point out some matter of law or fact which the Commission failed to consider or overlooked in its prior decision. A review of Order No. PSC-94-1334-PCO-WS indicates that no matter of law or fact was overlooked. Therefore, OPC's motion for reconsideration is hereby denied.

JJ's Response

JJ's responded to OPC's motion for reconsideration by filing a motion to toll time on November 10, 1994, in which it requests that the motion for reconsideration be denied or in the alternative, that JJ's be allowed additional time to file a response to OPC's motion. JJ's asserts that the Motion for Reconsideration should not have been filed because it addresses issues which have been stayed by Order PSC-94-1266-PCO-WS. JJ's

also claims that OPC can afford to file such motions because they are funded by public money, and that it is not as fortunate since it is paying private attorneys. Although JJ's response is designated as a motion, it is in reality a response to OPC's motion for reconsideration. Therefore, it is treated as a response in this Order, and not as a separate motion.

Subsequently, OPC filed a response to motion to toll time on November 18, 1994. OPC avers that its motion for reconsideration argues has no relevance to the stay ordered in PSC-94-1266-PCO-WS.

As stated in Order No. PSC-94-1266-PCO-WS, any outstanding discovery motion filed prior to the continuance would be addressed. That order only stayed prospective discovery; it did not stay action on any outstanding matters. Although JJ's should have filed a response to OPC's motion, it is now unnecessary for it to do so because OPC's motion is denied elsewhere in this Order.

Public Counsel's Motion for Reconsideration of Order
Granting Continuance and Requiring Status Report

On October 24, 1994, OPC filed timely a Motion for Reconsideration, pursuant to Rule 25-22.060, Florida Administrative Code. In its motion, OPC requests that the Prehearing Officer reconsider the order to stay discovery for 60 days. Subsequently, JJ's and George Wimpey of Florida, Inc. (Wimpey) jointly filed an Opposition to Public Counsel's Motion for Reconsideration on November 7, 1994.

OPC claims in its Motion that Wimpey is not the party who has contracted to purchase the utility. Rather, it is the Country Club of Mt. Dora Community Development District (CDD) that has contracted to purchase the utility. Therefore, OPC asserts that there is no contract between JJ's and Wimpey, and the Order was issued on false assumptions. Furthermore, if the sale is consummated, OPC claims that discovery is necessary to answer questions before the sale can be approved.

In their response, JJ's and Wimpey claim that the Prehearing Officer heard all of the parties arguments during a telephonic conference on October 13, 1994, when Wimpey's Emergency Motion to Continue Controlling Dates was heard. Therefore, she knew of all the facts when she issued Order No. PSC-94-1266-PCO-WS. JJ's and Wimpey assert that OPC's Motion is just a reargument of the issues which was held during the conference. They further declare that OPC has no authority to act on transfer which it has no jurisdiction over.

The purpose of a motion for reconsideration is to point out some matter of law or fact which the Commission failed to consider or overlooked in its prior decision. Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). A motion for reconsideration is not an appropriate vehicle for mere reargument or to introduce new evidence or arguments which were not previously considered.

The supposed mistake is based upon the argument that although the sale will be to the CDD, several motions and the order refer to the sale to Wimpey, not the CDD. The contract clearly contemplates a sale between JJ's and the CDD. Any reference to Wimpey as the purchaser is incorrect, but does not constitute a mistake causing a reversal of the order. The parties and the Commission were aware of the parties to the sale.

During a telephone conference held on October 13, 1994, all parties had a chance to argue their position with respect to the continuance of the controlling dates and the subsequent order staying the discovery period. OPC's Motion is just a reargument of its views and does not point to any fact or law which the Prehearing Officer failed to overlook. Therefore, OPC's Motion for Reconsideration of Order Granting Continuance and Requiring Status Report is hereby denied.

In its motion, OPC raised questions about the impact of the purchase of the utility by the CDD. Those issues, while relevant to the sale of the utility to the CDD, are not ripe for determination at this point. The sale of the utility to the CDD is not before the Commission in this proceeding. If the sale is completed, it would likely come before the Commission as a transfer application pursuant to Section 367.071(4)(a), Florida Statutes. The possible situation outlined in OPC's motion does not constitute a mistake of fact or law which would justify overturning Order No. PSC-1266-PCO-WS.

Further, as noted in Order No. PSC-1266-PCO-WS, discovery is stayed until December 12, 1994. At that time, the Prehearing Officer will consider lifting the stay.

Based upon the foregoing, it is

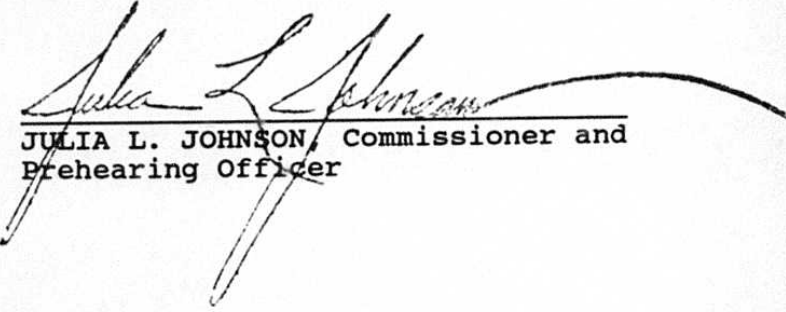
ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the Public Counsel's Motion for Reconsideration of Order Denying Discovery of Attorney Work Product from a Testifying Expert is hereby denied. It is further

ORDER NO. PSC-94-1563-PCO-WS
DOCKET NO. 921237-WS, 940264-WS
PAGE 5

ORDERED that Public Counsel's Request for Oral Argument for its Motion for Reconsideration of Order Denying Discovery of Attorney Work Product from a Testifying Expert is hereby denied. It is further

ORDERED that Public Counsel's Motion for Reconsideration of Order Granting Continuance and Requiring Status Report is hereby denied.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 15th day of December, 1994.



JULIA L. JOHNSON, Commissioner and
Prehearing Officer

(S E A L)

MSN/MEO

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: judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of

ORDER NO. PSC-94-1563-PCO-WS
DOCKET NO. 921237-WS, 940264-WS
PAGE 6

Appeal, in the case of a water or wastewater utility. 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.