

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer) DOCKET NO. 940963-SU
of territory served by Tamiami) ORDER NO. PSC-95-0137-PCO-SU
Village Utility, Inc., in Lee) ISSUED: January 27, 1995
County to North Fort Myers)
Utility, Inc., cancellation of)
Certificate No. 332-S and)
amendment of Certificate No.)
247-S; and for a limited)
proceeding to impose current)
rates, charges, classifications,)
rules and regulations, and)
service availability policies.)

ORDER QUASHING SUBPOENA AND GRANTING COMMISSION STAFF'S MOTION
FOR A PROTECTIVE ORDER

On January 10, 1995, the Office of Public Counsel (OPC), an intervenor in this proceeding, subpoenaed Mr. Jerrold E. Chapdelaine to appear at the hearing scheduled for February 2 and 3, 1995. Mr. Chapdelaine is a Utility Systems/Communication Engineer with this Commission's Division of Water and Wastewater, Bureau of Policy Development and Industry Structure.

On January 13, 1995, staff filed a Motion to Quash Subpoena and for a Protective Order. In its motion, staff argues that the subpoena should be quashed because staff is not a party to these proceedings and that its role is to develop an adequate record, to represent the public interest, and to advise the Commission. Staff further argues that to require the staff witness to testify will have a chilling effect on staff's preparation of Commission matters and would invade the agency's administrative process. Staff also argues that the Commission's previous orders would be the best evidence of a Commission decision and that the testimony sought in this case is irrelevant based on its understanding that the witness would be called upon to testify concerning recent, related transfer cases which are now pending on reconsideration.

On January 20, 1995, OPC filed a response to staff's Motion to Quash. OPC argues that it should be allowed to examine Mr. Chapdelaine to determine the veracity of statements authored by Mr. Chapdelaine in the recent, related dockets, as well as to determine whether Mr. Chapdelaine's statements were supported by competent, substantial evidence in the record of the other related dockets. OPC argues that this examination would be relevant because Mr. Chapdelaine's statements in Staff's Recommendations in those other dockets were repeated verbatim in the Commission's orders and that the orders arising out of those recommendations controls the resolution of the primary issue in this docket.

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FPSC-RECORDS/REPORTING

ORDER NO. PSC-95-0137-PCO-SU
DOCKET NO. 940963-SU
PAGE 2

On January 23, 1995, NFMU filed its response in support of staff's Motion to Quash.

Having reviewed the pleadings and being fully advised in the premises, staff's Motion to Quash Subpoena and for Protective Order as to Mr. Jerry Chapdelaine is hereby granted. Mr. Chapdelaine's participation in the recommendation process and the competency of statements in staff recommendations which may have been drafted by Mr. Chapdelaine are not relevant to this proceeding. Reconsideration, which is currently pending in the recent, related dockets, or appeal are the appropriate avenues for seeking review of final Commission actions. OPC may not litigate in this docket the competency of the evidence in previous, pending Commission decisions. Further, if OPC questions the credibility of utility witness Reeves, OPC may cross-examine Mr. Reeves at hearing. However, if OPC questions the integrity of Commission staff, it has chosen an improper and impolitic vehicle by which to raise that inquiry.

OPC has failed to establish that Mr. Chapdelaine's testimony could possibly lead to any relevant evidence. Further, in taking the position that the primary issue in the instant docket is the same as in the previous dockets merely confirms that certain issues now scheduled for hearing should be stipulated, without unnecessary expenditure of the Commission's or parties' resources.

Based on the foregoing, it is therefore,

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that the Commission Staff's Motion to Quash Subpoena and for a Protective Order as to Mr. Jerrold E. Chapdelaine is hereby granted.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 27th day of January, 1995.


DIANE K. KIESLING, Commissioner and
Prehearing Officer

(S E A L)

ORDER NO. PSC-95-0137-PCO-SU
DOCKET NO. 940963-SU
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.