

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
)		
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-95-0509-PCO-WS ISSUED: April 26, 1995
)		

ORDER ACKNOWLEDGING NOTICE

By Order No. PSC-95-0177-PCO-WS, issued February 7, 1995, the motion for continuance of the February 8-9, 1995, hearing, filed by the Office of Public Counsel (OPC), was granted. Order No. PSC-95-0208-PCO-WS, issued February 15, 1995, granted George Wimpey of Florida, Inc.'s motion to file amended testimony and a prehearing statement, required parties to file the testimony of witnesses previously identified as adverse, permitted discovery as to new matters, required the filing of prehearing statements, and set forth new dates for hearing activities.

Pursuant to Order No. PSC-95-0208-PCO-WS, parties were required to file testimony for witnesses who had not previously filed testimony. More specifically, the order required parties who had indicated witnesses as adverse to file the depositions of those witnesses as testimony. Direct testimony for all witnesses should have been filed by April 10, 1995.

On April 10, 1995, OPC filed a document entitled "Public Counsel's Notice of Inability to Comply with Order Directing that Depositions be Filed as Testimony." In its notice, OPC states that it cannot comply with the directive of Order No. PSC-95-0208-PCO-WS, requiring parties to file the depositions of adverse witnesses as testimony by April 10, 1995. OPC states that it "cannot be placed in a position where [the] use of permissible discovery restricts the direct case he can present at hearing." OPC further avers that prefiled testimony is a negotiated document between the attorney and witness, and that the attorney is essentially vouching for the expertise and credibility of the witness. OPC's concern over its inability to file a "sanitized" version of the witnesses' testimony will not be cured by the presentation of live testimony. Therefore, OPC states that because neither questions nor answers to questions can be orchestrated by mutual consent, discovery documents cannot serve the same purpose as prefiled testimony.

DOCUMENT NUMBER-DATE

04109 APR 26 1995

FPSC-RECORDS/REPORTING

Although styled as a notice, the document filed by OPC is in essence a motion to request leave to present the live testimony of its witnesses at the hearing. It will be treated as such in this Order.

There is authority for requiring parties to prefile testimony in administrative hearings. Section 120.53, Florida Statutes, allows agencies to adopt rules of procedure appropriate for the presentation of evidence. Commission Rule 25-22.048(4)(a), Florida Administrative Code, provides that evidence may be submitted in the form of written testimony. It also provides that a presiding officer may require all parties to prefile testimony. By Order No. PSC-93-0147-PCO-WS, issued January 28, 1993, establishing procedure, it was made clear that each party shall prefile, in writing all testimony that it intends to sponsor. Taking this one step further, the Commission has, in the past, ordered a party to file a deposition in lieu of testimony. In Order No. PSC-94-1013-PCO-WS, issued August 23, 1994, In Re: Application for a rate increase in Lee County by Harbor Utilities Company, Inc. (Docket No. 921261-WS), the utility was ordered to prefile the testimony of adverse witnesses, either by regular means, or by the use of a deposition.

Nevertheless, I find it appropriate in this instance to allow OPC to present live testimony of Mr. Jordan Hypes, Mr. Thomas Walden, and Mr. Thomas Williams. Although OPC has taken the depositions of these witnesses, questions are given more latitude in a deposition rather than in direct testimony. Further, the scrutiny of questions and how they are presented are much different in a deposition setting, than when conducting a direct examination. Additionally, due to the time constraints of this case, it would be difficult for OPC to retake the depositions, file them, and then give JJ's Mobile Homes, Inc. (JJ's) time to file rebuttal testimony before the hearing commences on May 11, 1995. Therefore, I hereby acknowledge OPC's notice to present live testimony its witnesses.

Because OPC will be presenting live testimony of its witnesses JJ's shall be permitted to present live rebuttal testimony.

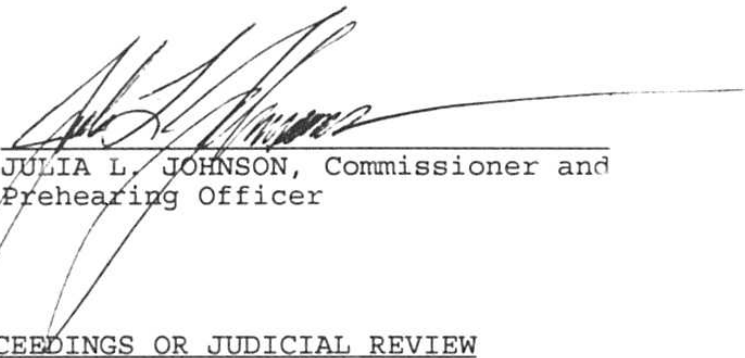
Based upon the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the Office of Public Counsel shall present live testimony of Messrs. Hypes, Walden, and Williams as part of its case in chief. It is further

ORDERED that JJ's Mobile Homes, Inc. shall be permitted to present live rebuttal testimony at the hearing.

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By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 26th day of April, 1995.



JULIA L. JOHNSON, Commissioner and  
Prehearing Officer

( S E A L )

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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.