

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in Highlands County by The Woodlands of Lake Placid, L.P.

DOCKET NO. 020010-WS
ORDER NO. PSC-03-0861-PCO-WS
ISSUED: July 23, 2003

ORDER DENYING L.P. UTILITIES, INC.'S MOTION TO STRIKE

On December 30, 2002, Highvest Corporation (Highvest) and L.P. Utilities, Inc. (L.P. or utility) filed a Petition for Formal Administrative Hearing with regard to Commission Order No. PSC-02-1739-PAA-WS. On January 17, 2003, an Order Establishing Procedure was issued to govern the conduct of the administrative hearing. That Order stated that the scope of the proceeding would be based upon the issues raised by the parties and Commission staff at the prehearing conference, unless modified by the Commission. At the May 5, 2003, Prehearing Conference, the Office of Public Counsel (OPC) notified the parties that customer testimony at the hearing might address additional matters not raised in its prehearing statement. The utility was informed at that time that the customer testimony would be allowed on matters not specifically addressed in the prehearing order.

During the service portions of the May 28, 2003, formal administrative hearing, customers of the utility presented testimony about the number of lots in the trailer park that were not rentable and the value of the land of Water Plant No. 1 held by the utility. At that time, L.P. objected to the customer testimony, but those objections were overruled. The utility was offered an opportunity to cross-examine or file rebuttal testimony on the customers' testimony. The utility did not do so.

On June 25, 2003, L.P. filed a Motion to Strike those portions of OPC's post-hearing statement that framed and addressed two additional issues raised by the customer testimony. On July 7, 2003, OPC filed a Motion for Extension of Time to file its response to the Motion to Strike, which was granted, and filed its Response on July 9, 2003.

In its Motion to Strike, L.P. states that OPC's Prehearing Statement did not identify the two additional issues. L.P. also

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states that its due process rights were violated because the two issues expanded the scope of the hearing and were not noticed. In its Response, OPC argues that the utility was given notice when OPC described in detail the information to which the customers intended to testify. OPC also argues that the Notice of Hearing issued by the Commission stated that the purpose of the hearing was to consider the utility's petition for an increase in water and wastewater rates, explicitly stating that customers would be given the opportunity to present testimony, and did not restrict the customers' testimony to any specific issues. Finally, OPC argues that the utility was given full opportunity to cross-examine on the issues, but did not avail itself of that opportunity.

Pursuant to Rules 28-106.209 and 28-106.211, Florida Administrative Code, the presiding officer has broad discretion to set the parameters of a case. There is no limit in administrative procedures on the Commission's discretion to address all issues that it determines to be relevant to a full resolution of a case when a PAA order is protested. See, Order No. PSC-97-0860-PCO-EI, issued July 16, 1997, in Docket No. 970281-TL; Order No. PSC-03-0159-PCO-SU, issued January 31, 2003, in Docket No. 020413-SU.

L.P. is, of course, correct that a party to an administrative proceeding is entitled to the due process afforded by notice and the opportunity to be heard. L.P. received the due process to which it was entitled in this case. The Order Establishing Procedure put the parties on notice that the Commission would consider all issues that it believed necessary to a full and just resolution of the case. The Notice of Hearing issued by the Commission stated that customers would be given the opportunity to present testimony. No limitations were placed on their testimony. L.P. was provided full opportunity to cross-examine the customers and file rebuttal testimony on the matters the customers raised, but chose not to do so.

The customer testimony presented at the hearing setting rates for their utility was admitted into the record, albeit over the utility's objection. The testimony may not be ultimately persuasive in the case, but that is for the Commission to determine as it reviews all the evidence in the record. Since that testimony is in the record, OPC is entitled to comment upon it in its post-hearing brief.

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Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason as Prehearing Officer, that L.P. Utilities, Inc.'s Motion to Strike portions of Public Counsel's Post Hearing Statement is DENIED.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 23rd day of July, 2003.



J. TERRY DEASON
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1)

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reconsideration within 10 days pursuant to Rule 25-22.0376, 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. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.