BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement regarding service availability charges by K W Resort Utilities Corp.	DOCKET NO. 050694-SU ORDER NO. PSC-05-1217-DS-SU ISSUED: December 14, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR
ISILIO ARRIAGA

ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

Background

On September 29, 2005, KW Resort Utilities Corp. (Utility or Petitioner) filed a Petition for Declaratory Statement. The Petition asked us to declare that the Utility's service availability charges for connection of its central wastewater service to Roy's Trailer Park (Development), a 103 unit mobile home park, had to be paid by the Development "up-front", rather than amortized over a period of at least 8 years. The Utility asserted in support of the Petition that its Commission-approved tariff did not provide for amortization of the payments and that statutes relied upon by the Development were inapplicable. The Development, on October 7, 2005, and Petitioner, on October 10, 2005, filed legal memoranda in support of their respective contentions.

Discussion

In the Memorandum of Law filed by the Development, various sections of Chapter 723, Florida Statutes, are set out to illustrate the legislative mechanism by which mobile home owners are protected from the imposition of certain unanticipated government-initiated charges which are also charges that can be passed through to mobile home owners. See, Section 723.003(10). The main statutory provision presented in the Development's argument to delineate that protective mechanism is Section 723.046, which states as follows:

> 723.046 Capital costs of utility improvements – In the event that the costs for capital improvements for a water or sewer system are to be charged to or to be passed through to the mobile home owners or if such expenses shall be required of mobile home owners in a mobile home park owned all or in part by the residents, any such charge exceeding $200 per mobile home owner may, at the option of the mobile home owner, be paid in full within 60 days from the notification of the assessment, or amortized with interest over the same duration

> and at the same rate as allowed for a single-family home under the local government ordinance. If no amortization is provided for a single house, then the period of amortization by the municipality, county, or special district shall be not less than 8 years. The amortization requirement established herein shall be binding upon any municipality, county, or special district serving the mobile home park. [e.s.]

In view of the above, the further conclusions of the Development on page 7 of its Memorandum are reasonable and supported. As there stated,

> Section 723.046 limits the timing of the obligations of both home owners and park owners to pay the costs of utility improvements required by governmental action. The "amortization requirement" of section 723.046 which is binding upon local governments and special districts serving the mobile home park, requires local governments to allow payment to be made over a period of not less than eight years. The obvious intent of this provision is that home owners should be allowed to pay their share of capital costs for utility improvements over the same amount of time the park owner is allowed to make payment. The statute provides that the amortization requirement set forth therein is binding upon any local government serving the mobile home park. [e.s.]

The argument presented by the Development, however, begs the question as to whether the Legislature extended this protective mechanism to mobile home owners served by private utilities regulated by us.[1] As noted by the Utility on p. 2 of its Memorandum,

> Petitioner is an investor-owned wastewater utility, subject to the regulatory jurisdiction of the Commission. It is not a municipality, county or special district, and is therefore, not subject to Section 723.046(1), Florida Statutes.

The Development's failure to present any convincing authority demonstrating that the Legislature extended the protective scheme in Section 723.046(1) to mobile home owners served by private utilities appears to be dispositive in favor of the Utility's position in this case. The Development's attempt to rely on Section 723.004(2), preempting local government activity in this area to the state, does not demonstrate any effect on our exclusive authority as a state agency to regulate private water and wastewater utilities pursuant to Chapter 367 generally and Section 367.011 specifically.

It is unconvincing as well for the Development to argue, as it does at page 1 of its Memorandum, that

> the instant matter has nothing to do with whether Petitioner will receive payment of such [Commission-approved, tariffed service availability] charges or of the

[1] While the need for the Development to connect to KW Resort's central wastewater utility may be "government-initiated", the service availability charge at issue is not. It is a privately initiated charge consistent with the Utility's Commission-approved tariff.

> amount of such charges . . . . This case addresses only the issue of the time period over which such charges may be collected from a mobile home park owner by the utility. [e.s.]

Section 367.011(2) grants us

> exclusive jurisdiction over each utility with respect to its authority, service and rates.

The Development's attempt to distinguish jurisdiction over the amount of the service availability charge from the time period in which the charge must be paid has no support in the statute and misreads our jurisdictional grant from the Legislature. Where, as here, we have approved a certain charge as necessary for the Utility to provide service, a unilateral decision by the purchaser of the service to invoke the Utility's obligation to provide the service and, notwithstanding that, to keep the Utility waiting eight years to receive the approved charge for connecting the service, would nullify the exercise of our jurisdiction over the Utility's authority, service and rates. Clearly, that exercise of jurisdiction in approving the tariff at issue authorized the Utility to provide the service and collect the charge. Since Section 723.046(1) has not been extended to service other than that provided by local governments, the Development can no more delay payment of the authorized connection charge over time than the utility can delay the provision of adequate service over time. See, Section 367.111(2).[2]

The Development's references to No. PSC-94-0171-WS and United Telephone Company v. Public Service Commission, 496 So. 2d 116 (Fla. 1986), do not alter the analysis. As to Order No. PSC-94-0171-WS, the fact that the Circuit court could adjudicate a contract dispute involving a utility owner's representations to home owners in its development prospectus does not change the fact, referred to in that Order, of our "exclusive jurisdiction over utilities with regard to their service, authority, and rates pursuant to Section 367.011, Florida Statutes." In this case, the Utility is not claimed to have represented to the Development or pass-through purchasers that they could amortize the service availability charge. Indeed, it is undisputed that the tariff at issue does not provide for amortization. There is, thus, no "contract dispute" at issue, only a lack of any demonstration that Section 723.046(1) extends to private utilities.

As to the United Telephone case, we were found therein to lack the authority to modify a contractual business arrangement entered into by telephone companies between themselves. There is not, in this case, any contractual business arrangement between utilities we have sought to modify. United Telephone is, therefore, inapposite to the facts of this case.

The limitation on our jurisdiction which is relevant is the lack of jurisdiction and lack of any attempt to exercise jurisdiction by us over the interaction between the Development and its homeowners. That is the subject matter of Chapter 723 and further evidence that Section

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[2] In effect, though the Development or its pass-through purchasers may have invoked the Utility's obligation to provide service in order to comply with government requirements, they are not being provided that service by municipal, county or special district utilities so as to qualify for Section 723.046(1) amortization.

723.046(1) is not correctly read to require the Utility to amortize its service availability charges to its customer, the Development.

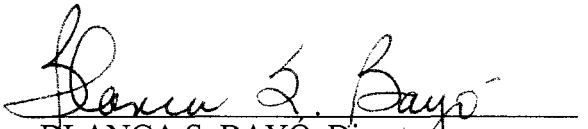
To summarize, the Petition should be granted because the Utility's customer, Roy's Trailer Park, Inc., has cited no authority allowing it to demand a differently provisioned charge, an amortized charge, than the unamortized charge approved in the tariff by us. In contrast, neither the granting of the Petition nor the analysis herein in any way forecloses the Roy's Trailer Park Development from amortizing the charge when it passes the charge through to its home owners. That is a matter for decision between the Development and its homeowners which is neither required nor foreclosed by any of the cited authority, or by the exercise of our jurisdiction.

In view of the above it is

ORDERED by the Florida Public Service Commission that the Petition for Declaratory Statement of KW Resort Utilities Corp. is granted. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission this 14th day of December, 2005.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

RCB

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.

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.