

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of a special)	DOCKET NO. 880596-SU
service availability contract between)	
GULF AIRE PROPERTIES d/b/a GULF AIRE)	ORDER NO. 21291
WASTEWATER TREATMENT PLANT and C.M.)	
PARKER AND CECIL G. COSTIN, JR. in GULF)	ISSUED: 5-26-89
COUNTY)	

ORDER GRANTING MOTION FOR CONTINUANCE

By Order No. 19435, issued as proposed agency action on June 6, 1988, this Commission approved a developer agreement between Gulf Aire Properties, Inc. d/b/a Gulf Aire Wastewater Treatment Plant (Gulf Aire) and C. M. Parker and Cecil G. Costin, Jr. (Developers), subject to certain modifications. We also rejected a proposed agreement between Gulf Aire and the Developers for the lease of a Developer-installed wastewater collection system, modified Gulf Aire's service availability policy and approved a guaranteed revenue charge. Further, by Order No. 19535, we authorized Gulf Aire's collection of the guaranteed revenues, subject to refund, in the event of a timely protest and required it to file an escrow agreement for our approval.

On July 5, 1988, the Developers filed a timely protest to Order No. 19435. Subsequent to our receipt of the protest, Gulf Aire filed an escrow agreement for our approval. We noted a number of deficiencies in the agreement and notified Gulf Aire thereof, however, it failed to cure these deficiencies in a timely manner.

On March 13, 1989, the Developers filed a motion for a continuance. The basis of its motion was that Mr. Costin is extremely ill and is not be able to participate in this case under the current case schedule. The Developers, therefore, requested that this case be continued for eight months.

On March 14, 1989, Gulf Aire filed a response to the Developer's motion for continuance and a request for a motion hearing. In its response, Gulf Aire indicated that it had no specific objection to a continuance, subject to certain conditions. These conditions include the Developers' payment of all guaranteed revenues due and owing and their assurance that such revenues will be paid promptly in the future, the Developers' assurance that its collection system will be in good working order if and when contributed and this Commission's consideration of a motion to dismiss filed by Gulf Aire. A motion hearing was held regarding Developers' motion and Gulf Aire's response, before the Prehearing Officer, on April 17, 1989.

At the motion hearing, each party was given the opportunity to present its position regarding the motion for continuance and the response. Gulf Aire agreed that a continuance may be warranted, however, it reiterated its conditions for agreeing to such a continuance. It also agreed that at least one of its conditions, the resolution of its motion to terminate, had already been addressed by Order No. 20996, issued April 7, 1989. Accordingly, only the conditions regarding the guaranteed revenues and the condition of the collection system need to be addressed by this Order.

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Guaranteed Revenues

Counsel for the Developers, while not able to ensure the Developers' payment of guaranteed revenues, stated that payment should be conditioned upon Gulf Aire's curing the deficiencies in its escrow agreement noted above. Although Gulf Aire stated that it was not aware of any deficiencies, it agreed to cure any deficiencies noted by this Commission.

Condition of Plant

As for the condition of the plant at the time of its contribution, the Developers stated that it was their belief that the collection system had already been donated and accepted. Gulf Aire stated that, although it currently served a small number of customers on the collection system in question, it did not believe that it had accepted the plant. Whether the collection system has actually been donated and the condition of the plant are disputed issues of fact which, the Prehearing Officer finds, are best left for the hearing in this case. Accordingly, the Prehearing Officer finds that requiring assurances that the plant is in good condition as a precedent to granting of the motion for continuance is inappropriate at this stage of the proceeding.

Motion For Continuance

Based upon the arguments presented at the motion hearing, the Prehearing Officer finds it appropriate to grant the Developers' motion for continuance, subject to their payment of the previously authorized guaranteed revenues. Further, the Prehearing Officer finds it appropriate to condition Developers' payment of the guaranteed revenues upon Gulf Aire's filing of a satisfactory escrow agreement. Gulf Aire shall file this agreement no later than April 27, 1989. The Developers shall remit all due and payable guaranteed revenues to Gulf Aire no later than June 16, 1989. Should the Developers fail to comply with the provisions of this Order, it may be appropriate to entertain a motion to dismiss.

It is, therefore,

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that the motion for continuance filed by C.M. Parker and Cecil B. Costin, Jr., is hereby granted as set forth in the body of this Order. It is further

ORDERED that Gulf Aire Wastewater Treatment Plant shall file an escrow agreement for our review no later than April 27, 1989. It is further

ORDERED that C.M. Parker and Cecil G. Costin, Jr. shall remit all past and present guaranteed revenues which are due and payable no later than June 16, 1989.

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By ORDER of Commissioner Thomas M. Beard, as Prehearing Officer, this 26th day of MAY, 1989


THOMAS M. BEARD, Commissioner and
Prehearing Officer

(S E A L)

RJP

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 sewer 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.