

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint and petition ) DOCKET NO. 920649-WS  
of Cynwyd Investments against ) ORDER NO. PSC-93-0810-FOF-WS  
TAMIAMI VILLAGE UTILITY, INC. ) ISSUED: 05/25/93  
regarding termination of water )  
and wastewater services in Lee )  
County. )

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
THOMAS M. BEARD  
SUSAN F. CLARK  
JULIA L. JOHNSON  
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION ORDER  
DENYING RELIEF REQUESTED IN COMPLAINT AND  
ALLOWING UTILITY TO TERMINATE SERVICE IF  
CUSTOMER FAILS TO MAKE DESIGNATED REPAIRS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On June 24, 1992, Cynwyd Investments (Cynwyd) filed a complaint against Tamiami Village Utility, Inc., (TVU). Cynwyd, a RV park and bulk customer of TVU, alleges in its complaint that TVU has threatened to terminate service to Cynwyd if Cynwyd did not submit a viable plan for curing an alleged infiltration problem in the park. Cynwyd requests that the Commission enter an order forbidding TVU from terminating service pending resolution of a related dispute between Cynwyd and TVU in Circuit Court. In that proceeding, TVU is seeking damages against Cynwyd for causing the alleged infiltration. Cynwyd claims, in Circuit Court as well as here, that it does not own and is therefore not responsible to maintain the collection lines in the RV park. In its answer to Cynwyd's complaint with the Commission, TVU argues that Cynwyd has violated TVU's tariff by causing excessive infiltration to enter the wastewater collection system.

DOCUMENT NO  
05696-93  
5-25-93

On July 2, 1992, counsel for TVU informed our staff by telephone and facsimile that TVU would terminate service to Cynwyd that day because "the current emergency situation created by record rainfall necessitates the discontinuance of service in the park in accordance with tariff provisions immediately." In reply, our staff informed TVU that Rule 25-30.320(6), Florida Administrative Code, prohibits a utility from terminating service after noon on any day before a holiday--Friday, July 3, 1992, in this case--even if the utility was otherwise entitled to do so. TVU did not terminate Cynwyd's service.

On July 6, 1992, Cynwyd filed a Motion for Emergency Relief wherein it asked the Commission to enter an emergency order barring TVU from terminating service during the pendency of the parties' Circuit Court dispute. In this motion, Cynwyd disputed TVU's interpretation of its tariff and the factual basis for TVU's claim that its tariff allows it to terminate Cynwyd's service.

By Order No. PSC-92-0636-PCO-WS, issued July 9, 1992, the Prehearing Officer granted in part Cynwyd's Motion for Emergency Relief. TVU was enjoined from terminating Cynwyd's service until further Order of the Commission or thirty days from the date of the Order, whichever occurred first. By Order No. PSC-92-0854-FOF-WS, issued August 24, 1992, this Commission, on its own motion, prohibited TVU from terminating Cynwyd's service during the pendency of Cynwyd's complaint at the Commission. According to Cynwyd's counsel, an attempt to mediate the Circuit Court matter failed, so that case is still pending.

#### PRESENCE OF INFILTRATION

Infiltration is groundwater which has leaked into a wastewater collection system through holes or breaks in a system's lines. Inflow is rainwater which has leaked into a collection system through manholes. All collection systems experience some infiltration, since most wastewater lines are laid below groundwater level.

The Cynwyd RV park has approximately 4,700 feet of gravity wastewater lines within its borders. A not-to-scale drawing of the wastewater collection system within the RV park appears in "Attachment A," which is attached hereto and by reference incorporated herein. In the drawing, lines are designated with letters and manholes are designated with numbers. Throughout this

Order, we make reference to various parts of the collection system by these designations.

On March 23, 1993, TVU conducted an infiltration test on the RV park lines in the presence of our staff engineer and the RV park manager. For the test, the RV park's water supply was shut off. After 45 minutes passed, the manholes in the park were examined. Flows present in the manholes during this period are, we believe, a fair representation of infiltration entering the collection system. A camcorder was used to record the flows in the manholes during the test. It was observed that two lines, labelled as lines K and T in Attachment A, were allowing noticeable amounts of infiltration to enter the collection system. It was also observed that manhole 10 was cracked at the top and would allow excess inflow to enter the collection system if the area were to experience flooding after a heavy rainfall.

Cynwyd conducted its own infiltration test in October, 1992, under the direction and supervision of its engineer. For this test, individual lines which were not in use were plugged at both ends at the manholes for a 24 hour period. Cynwyd then measured how much infiltration entered a line by timing how long it took a 4 gallon per minute pump to remove the fluid that had accumulated in the line during the 24 hour period. This test indicated that lines D, E, K, T, and U were allowing excessive infiltration to enter the collection system.

In consideration of the above, we find that lines D, E, K, T, and U are allowing excess infiltration to enter the collection system and that manhole 10 needs repair in order to prevent an inflow problem.

#### RESPONSIBILITY FOR LINES

As stated above, Cynwyd maintains that it does not own and is therefore not responsible for maintaining the lines within the park. We do not agree.

In July, 1991, TVU paid Sewer Viewer Inc. \$11,640 to repair and seal wastewater lines in the Cynwyd RV park. TVU requested recovery of this expense in its last rate case, Docket 910560-WS, In re: Application of Tamiami Village Utility, Inc. for Increased Water and Wastewater Rates in Lee County. In Order No. PSC-92-0807-FOF-WS, issued August 11, 1992, this Commission found that TVU should not be allowed to recover from the general body of

ratepayers expenses associated with maintaining the wastewater lines beyond the point of delivery to the RV park. Specifically, with respect to the question of who should be responsible for maintaining the lines, the Commission stated:

TVU purchased the utility assets from TUC pursuant to contracts originally entered into between TUC and Southern States Utilities, Inc. TVU took the place of Southern States under the contract. Section 16 (d) of the contract for purchase of the utility assets states, "Southern States agrees that users of the services provided by it shall be liable to maintain only those portions of the water and sewer systems on the users' side of meters."

Rules 25-30.225(5), (6), and (7), and Rules 25-30.230 and 25-30.231, Florida Administrative Code, specify that a utility has the obligation to provide water and wastewater service up to the customer's point of delivery. In consideration of the evidence on the record and the direction of the above-referenced rules, we believe that the point of delivery to the RV park is the meter for water service and the property line for wastewater service. The fundamental question here is, "Who is the customer?" Clearly, the customer is the RV park, not the individual renters of spaces in the RV park.

Although we are not vested with jurisdiction to determine legal ownership of the lines in the RV park, we do have the obligation and authority to determine which costs are appropriate for ratemaking purposes. If it is resolved elsewhere that the utility has legal title to the lines in the RV park, we think that the RV park's obligation to maintain the lines should remain; in which case the RV park should either maintain the lines itself or pay the utility a charge for the costs of maintaining the lines.

Order No. PSC-92-0807-FOF-WS, pp. 20-21.

Accordingly, we find that Cynwyd is responsible for maintaining that portion of the collection system which is beyond TVU's point of delivery to the RV park. However, since some of the lines which run through the RV park provide service both to the RV

park and to other TVU customers outside the RV park, we think it reasonable to find that TVU, not Cynwyd, should be responsible for maintaining those facilities. Those lines are identified on Attachment A as lines F, J, Y, and Z and manholes 9 and 32. We note that none of these latter facilities were determined to have been subject to infiltration or inflow.

CONDITIONS FOR CONTINUED SERVICE

Paragraph 25.0 of TVU's Tariff Sheet No. 14.0 (First Revised) allows TVU to terminate service to a customer who discharges or causes to be discharged "storm water, surface water, groundwater, roof run-off, [or] sub-surface drainage" to any of TVU's mains. Further, Rule 25-30.320 (2)(g), Florida Administrative Code, allows a utility to terminate the service of a customer who violates the utility's rules and regulations.

In consideration of the above findings and the cited tariff and rule provisions, we believe that there is adequate basis in fact and law for TVU to terminate Cynwyd's service. There is infiltration entering TVU's mains from the RV park, and Cynwyd is responsible for maintaining the facilities causing the problem. Thus, TVU is within its rights to terminate Cynwyd's service.

For TVU, infiltration is a serious problem since the two percolation ponds it uses for effluent disposal have had recurring operational problems. In April and June of 1991, heavy rains caused the content of the two ponds to come close to overflowing the berms. TVU had to use an emergency overflow structure to lower the ponds' levels and prevent the effluent from overflowing the berms or causing the berms to collapse. The Florida Department of Environmental Regulation (DER) took legal action against TVU and had demanded that TVU immediately lower the ponds' levels. By a February 17, 1993, Circuit Court Order, TVU was required to immediately lower the content levels of the ponds. One of the steps TVU has taken to comply with the Court Order and with DER directives is hiring Sewer Viewer Inc. to repair the lines that TVU is responsible for maintaining. TVU is unwilling, however, to repair the lines in the RV park in light of the Commission's decision in Order No. PSC-92-0807-FOF-WS.

We believe Cynwyd should be given a reasonable time to perform the necessary repairs before TVU is allowed to terminate service to Cynwyd. Therefore, Cynwyd should immediately start planning to repair the lines in the RV park. Within 15 days of the date of

this Order, Cynwyd shall file with the Commission a schedule for repairing lines D, E, K, T, and U and manhole 10. All repairs shall be complete within 90 days of the date of this Order. Cynwyd may request additional time to complete the repairs, provided it gives adequate explanation for its request. If Cynwyd fails to complete the repairs as scheduled, TVU may terminate Cynwyd's water and wastewater service. (We note that, in this case, wastewater service cannot be terminated without terminating water service as well.)

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that each of the findings made in the body of this Order and all matters contained in the attachment hereto are incorporated herein in every respect. It is further

ORDERED that Tamiami Village Utility, Inc., will be allowed to terminate the water and wastewater service of Cynwyd Investments if Cynwyd Investments fails to complete necessary repairs to lines D, E, K, T, and U and manhole 10, as required in the body of this Order.

ORDERED that within 15 days of the date of this Order, Cynwyd Investments shall file a schedule for repairs, and, unless an extension is granted, all necessary repairs shall be completed within 90 days of the date of this Order. It is further

ORDERED that in the event no timely protest is filed, this docket may be closed upon Cynwyd Investment's filing the repair schedule discussed in the body of this Order and our staff's verification that same is consistent with our decision.

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By ORDER of the Florida Public Service Commission this 25th  
day of May, 1993.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MJF

by: Kay Feigen  
Chief, Bureau of Records

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 15, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

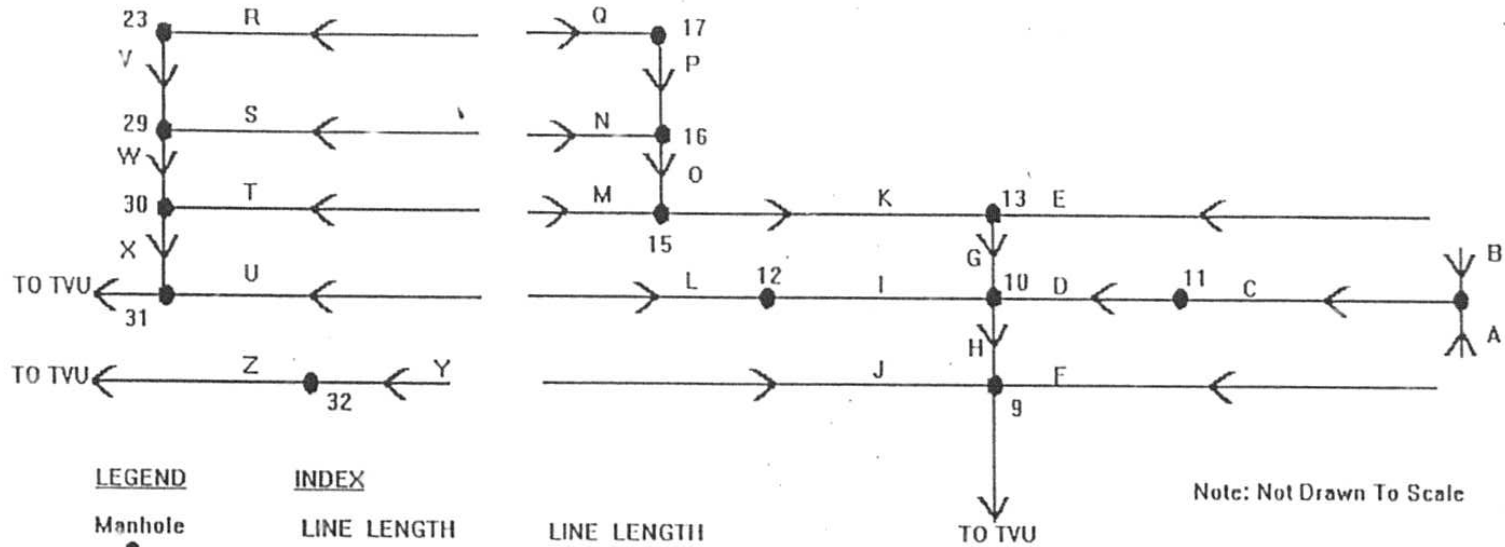
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Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date 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.



# RV PARK WASTEWATER COLLECTION SYSTEM



Note: Not Drawn To Scale

**LEGEND**

Manhole



Flow Direction



**INDEX**

LINE LENGTH

A	60'
B	78'
C	234'
D	217'
E	400'
F	390'
G	120'
H	120'
I	210'
J	390'
K	387'
L	272'
M	140'

LINE LENGTH

N	142'
O	120'
P	120'
Q	145'
R	375'
S	390'
T	402'
U	404'
V	127'
W	127'
X	116'
Y	206'
Z	204'