

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a staff-) DOCKET NO. 920828-SU
assisted rate case by L.C.M.) ORDER NO. PSC-93-1054-PCO-SU
Sewer Authority in Lee County) ISSUED: July 19, 1993
_____)

ORDER DENYING BONITA SPRINGS UTILITIES, INC.'S
PETITION TO INTERVENE

L.C.M. Sewer Authority (LCM or utility) is a Commission certificated wastewater utility which has filed an application for a staff-assisted rate case. Currently, the utility is in receivership pursuant to Section 367.165, Florida Statutes. Water Spectrum, Inc. (Water Spectrum) was appointed receiver by the Circuit Court in Lee County in November, 1992. By Order No. PSC-93-0633-FOF-SU, issued April 22, 1993, the Commission granted LCM's request for emergency temporary rates, and placed the docket in monitor status, pursuant to the utility's request, for a period of no more than six months from March 30, 1993.

On March 25, 1993, Bonita Springs Utilities, Inc. (BSU) filed a petition to intervene in the above-referenced docket. BSU is a customer-owned non-profit regional water and wastewater system providing service to unincorporated Bonita Springs.

In its Petition, BSU states the following: 1) BSU is substantially affected by LCM's request for a rate increase; 2) BSU has petitioned the Circuit Court for intervention in the case of Lee County v. L.C.M. Sewer Authority, Inc., Case No. 92-2192-CA-WCM, wherein it is requesting that the Court find that LCM should be connected to the facilities and plant of BSU; 3) BSU recently closed a \$23 million Industrial Development Bond Issue, the proceeds of which have been utilized to construct a designated regional wastewater system for the Bonita Springs area in hopes that 65 wastewater plants will be taken off-line and incorporated into the regional system in 1993; 4) BSU's board of directors has offered certain existing systems, such as LCM, who agree to connect to the regional system an exemption from payment of connection or impact fees; and 5) it is in the public interest to connect LCM's facilities to the system available at BSU. For purposes of information, a hearing has not been scheduled for BSU's Petition to Intervene in the Circuit Court case.

BSU contends that because it has the facilities and system to interconnect with LCM that this connection would constitute a disposition of the property, as contemplated by Paragraph (b), Section 1, of the Court's Receivership Order and Section 367.165(2), Florida Statutes. BSU requests that it have the right

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to submit information as appropriate or as requested and to receive all pleadings, correspondence, and other information in the instant docket.

On April 12, 1993, Water Spectrum filed a Response to BSU's Petition to Intervene urging that the petition and the request for an evidentiary hearing not be granted because BSU is not a customer of LCM and its substantial interests are not affected in this proceeding. Water Spectrum asserts that only "substantially affected" persons may intervene in a rate case. Water Spectrum states that BSU has failed to show that it is or will be affected by the rate case and in support of its Response, cites Agrico Chemical Company v. DER, 406 So.2d 478 (Fla. 2nd DCA 1981).

Water Spectrum also asserts that BSU lacks standing and cites Laird v. Tatus, 408 U.S. 1 (1972) and Field v. Brown, 610 F.2d 981 (1979), wherein the Court held that to establish standing, a person must present a claim of specific present objective harm or a threat of specific future harm. Water Spectrum asserts that BSU has failed to demonstrate standing because in its motion to intervene it alleges neither a specific present objective harm to itself nor a threat of specific future harm.

Water Spectrum also argues that it is not in the best interests of LCM's customers to interconnect with BSU; and if this indeed does occur, it would further solidify BSU's monopoly of that service. Further, Water Spectrum requests that if BSU's motion is granted and it is allowed to intervene, BSU should be ordered to pay "LCM's legal and miscellaneous expenses."

On April 21, 1993, BSU filed a response to Water Spectrum's Response, although the Commission rules do not contemplate such a responsive filing. BSU cites the abandonment statute under Section 367.165, Florida Statutes, to argue that it is a substantially affected party. This statute provides that once a utility is placed into receivership, the utility shall be operated until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service. BSU argues that the statute does not contemplate that the receiver will permanently run the system nor that the abandoned utility infrastructure will necessarily be "fixed" so as to continue effective and efficient service.

BSU further asserts that because it has petitioned the Circuit Court and because it has proposed a permanent solution to the

problems of the abandoned LCM system, it is substantially affected by the pending rate case. BSU also argues that it is not appropriate for BSU to be ordered to pay LCM's legal and miscellaneous expenses since Water Spectrum is not represented by an attorney, and receipt of attorney's fees by the President of Water Spectrum, for "legal service" rendered on behalf of LCM would constitute the unlicensed practice of law.

Rule 25-22.039, Florida Administrative Code, provides that persons who have a substantial interest in a proceeding and who desire to become parties may petition for leave to intervene. Such petition to intervene must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceedings.

In Agrico, the Court stated that before one can be considered to have a substantial interest in the outcome of a proceeding, he must show: 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Id. at 482. Water Spectrum's assertion that BSU has not met the two-prong test found in Agrico is correct. Although BSU asserts that LCM may be interconnected with it, that interconnection has not occurred, and thus there is no showing of BSU suffering an injury of sufficient immediacy to meet the first prong of the Agrico test. As to the second prong, BSU has made no showing that it has a substantial injury of the type a staff-assisted rate case is designed to protect. The purpose of the rate case is to authorize rates and charges such that the utility has the opportunity to collect revenues sufficient to meet its operating expenses and earn a reasonable return. A receiver files for a rate case because the system which has been entrusted to his care by the Court is indeed a troubled system and needs to be "fixed" so that the customers receive safe and sufficient service until the system can be properly disposed of.

Additionally, BSU's pleading does not meet any of the criteria for intervention set forth in Rule 25-22.039, Florida Administrative Code. BSU does not have a right to intervention based on any constitutional or statutory provision or on any Commission rule. BSU's substantial interests are not subject to

ORDER NO. PSC-93-1054-PCO-SU
DOCKET NO. 920828-SU
PAGE 4

determination by nor can they be affected by the outcome of this proceeding as discussed above. In consideration of the foregoing, BSU's Petition to Intervene is hereby denied.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that the Petition to Intervene filed by Bonita Springs Utilities, Inc., is denied.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 19th day of July, 1993.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

LAJ

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

ORDER NO. PSC-93-1054-PCO-SU
DOCKET NO. 920828-SU
PAGE 5

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.