

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint and Petition) DOCKET NO. 920649-WS
of Cynwyd Investments Against)
TAMIAMI VILLAGE UTILITY, INC.)
Regarding Termination of Water)
and Wastewater Services in Lee)
County.)
_____)
In Re: Complaint Against) DOCKET NO. 930642-WS
TAMIAMI VILLAGE UTILITY, INC. by) ORDER NO. PSC-93-1452-PHO-WS
CYNWYD INVESTMENTS, and Request) ISSUED: October 5, 1993
for Emergency Order Requiring)
the Utility to Reestablish Water)
and Wastewater Service to)
Cynwyd's Friendship Hall in Lee)
County.)
_____)

Pursuant to Notice, a Prehearing Conference was held on September 27, 1993, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

No Appearance - Robert Medvecky, Esquire, 1500 Colonial Blvd. 230, Ft. Myers, Florida 33912
On behalf of TAMIAMI VILLAGE UTILITY, INC.

Patrick K. Wiggins, Esquire, Wiggins & Villacorta, P.A., P.O. Drawer 1657, Tallahassee, Florida 32302
On behalf of CYNWYD INVESTMENTS.

Sheila L. Erstling, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff.

Prentice Pruitt, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862
On behalf of the Commissioners.

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PREHEARING ORDER

I. CASE BACKGROUND

Tamiami Village Utility, Inc., (TVU or utility) is a Florida Corporation that operates its water and wastewater utility service in Lee County, Florida. Cynwyd Investments (Cynwyd) is a Pennsylvania General Partnership that owns an RV park and other parcels of property, including the Friendship Hall recreation center, either adjoining or within the Tamiami Village Mobile Home community in Lee County, Florida. Cynwyd's RV park is a bulk customer of TVU, while its other parcels are on separate meters.

On June 24, 1992, Cynwyd filed a complaint which was followed by a request for emergency relief filed on July 6, 1992. Cynwyd alleged that TVU threatened to terminate service to the RV Park because of excessive infiltration into TVU's wastewater system from faulty lines. Proposed Agency Action Order PSC-93-0810-FOF-WS, issued May 25, 1993, which addressed this complaint was timely objected to by Cynwyd and this matter set for formal hearing.

Subsequently, Cynwyd filed a second request for emergency relief, on July 1, 1993, based upon TVU's alleged threat to disconnect service to the Friendship Hall recreation center. The disagreement in this complaint was over the purported unauthorized use of an open drain around the pool which caused excessive infiltration into TVU's wastewater system. Cynwyd complied with TVU's request and disconnected the open drain. Subsequently, it was billed \$801 by the utility for prior unauthorized use. Cynwyd has refused to pay this disputed amount. July 26, 1993, by Order No. PSC-93-1086-PCO-WS, this Commission consolidated complaint Dockets Nos. 920649-WS and 930642-WS after our determination that both dockets involve essentially the same facts, the same parties, and some of the same witnesses.

TVU's request for a telephone prehearing conference was denied by Order No. PSC-93-1386-PCO-WS issued September 22, 1993. Subsequently, the utility's attorney advised staff that due to the prohibitive cost involved his client would not permit him to attend the prehearing conference. The utility by filing its

testimony and its prehearing statement has made evident its intent to fully participate in the hearing. Therefore, this non appearance is not to be construed as a waiver of the utility's positions.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

III. POST-HEARING PROCEDURE

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. You must include in that statement, a summary of each position of no more than 50 words, set off with asterisks. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50

words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

IV. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

V. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Henry F. Thomas	Utility	All

Order of Witnesses Continued

<u>Witness</u>	<u>Appearing For</u>	<u>Issues</u>	<u>#Rebuttal</u>
Herbert Kurtz	Complainant	All	

Staff does not intend to call any witnesses.

VI. BASIC POSITIONS

COMPLAINANT: The key issue is whether it is the utility's or Cynwyd's obligation to repair lines within the RV park. Simply put, this dispute is before the Commission because TVU now maintains that it is Cynwyd's responsibility to repair certain sewer lines, and has attempted to force Cynwyd to make these repairs by terminating service.

The Commission's Rules make it the utility's responsibility to maintain lines and equipment "up to and including the point of delivery into the piping owned by the customer." (Rule 25-30.225 (5)) Under Commission Rule 25-30.210 (6), "Point of delivery" (means) where the service pipe is connected to utility's main. Moreover, the point of delivery for sewer service is customarily where the service lateral meets the main, irrespective of whether water service is individually or master metered. Further, this is the meaning given to that term during the ten years that Cynwyd owned the utility, and is consistent with the utility's own tariffs. Thus, the mains within the RV park running up to the service laterals are the responsibility of the utility.

TVU's responsibility notwithstanding, Cynwyd has undertaken the repair of certain sewer mains on a voluntary basis to avoid wasting money on legal fees and expert fees, and to facilitate the resolution of differences.

UTILITY: Cynwyd, a customer of TVU has violated the tariffs filed by TVU and approved by the Commission. Those same tariffs provide for discontinuance of service to a customer violating the provision of the tariff violated by Cynwyd.

The discontinuance of service by TVU was proper.

The issuance by the Commission of an ex parte injunction and the continuance of that injunction for more than fifteen months was and is unlawful.

TVU was entitled to the protection of bond if requested by timely motion.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

The information gathered through discovery and prefiled testimony indicates, at this point, that excessive infiltration has occurred and that there was an unauthorized connection at Cynwyd's Friendship Hall pool. The specific charge for unauthorized use cannot be determined until the evidence presented at hearing is analyzed. Staff's position as to Cynwyd's responsibility for repair of the wastewater mains and lines is consistent with Order No. PSC-93-0810-FOF-WS.

VII. ISSUES AND POSITIONS

ISSUE 1: **Are the lines within the Cynwyd RV park causing excessive infiltration?**

POSITIONS

COMPLAINANT: Unknown. It is true that there has been infiltration in excess of that allowed by the Commission standards for several of the sewer lines, but it is doubtful that this infiltration

is "excessive" in comparison to other mains outside the RV park.

UTILITY: The utility has not addressed this issue as stated. Instead, the utility states that the customer delivered excessive amount of water into TVU's system

STAFF: A number of lines are causing excessive infiltration.

ISSUE 2: How much will it cost to repair the lines in the Cynwyd RV park?

POSITIONS

COMPLAINANT: Unknown. The repair costs obviously depends on how many mains actually need repair. Cynwyd has identified four lines that experienced infiltration above Commission standards. These mains were E, K, T, and U. As a gesture of good faith and in attempt to avoid further litigation, Cynwyd has repaired line K, almost completed line T, and partially repaired line E. The cost of these repairs has been in excess of \$5,000.00.

UTILITY: No position taken.

STAFF: No position pending further development of the record.

ISSUE 3: Is it the utility's or Cynwyd's obligation to repair the lines within the Cynwyd RV park?

POSITIONS

COMPLAINANT: The Commission's Rules makes it the utility's responsibility to maintain lines and equipment "up to and including the point of delivery into the piping owned by the customer." (Rule 25-30.225 (5)) Under Commission Rule 25-30.210 (6), "Point of delivery" (means) where the service pipe is connected to utility's main. Moreover, the point

of delivery for sewer service is customarily where the service lateral meets the main, irrespective of whether water service is individually or master metered. Further, this is the meaning given to that term during the ten years that Cynwyd owned the utility, and is consistent with the utility's own tariffs, which defines point of delivery for sewer service as "The point where the Company's pipes are connected with the pipes of the Consumer's, namely at the main line connection in easements, or property line on the street side." (TVU Sewer Service Tariff Fifth Revised Sheet No. 5, Par. 5.0) Thus, the mains within the RV park running up to the service laterals are the responsibility of the utility.

UTILITY: The customer is responsible for maintenance of its side of the point of delivery, irrespective of ownership of facilities.

STAFF: See Order No. PSC-93-0810-FOF-WS. Rules 25-30.225(5), (6), and (7), and Rules 25-30.230 and 25-30.231, Florida Administrative Code establish responsibilities of the utility and the customer for maintenance and repair of the lines. The customer has the responsibility of maintaining the lines from the point of delivery.

ISSUE 4: Did the utility treat wastewater from an unauthorized connection received from Cynwyd's Friendship Hall swimming pool?

POSITIONS

COMPLAINANT: No. It is true that the Friendship Hall swimming pool had a drain that connected into the utility's sewer system, but Cynwyd cannot in good faith agree that this connection was unauthorized. The Commission needs to recognize that the current owners demanded the purchase of the utility when it had already been sold to Southern States. These owners knew or should have known the operating characteristics of the system, including the existence of this outside shower drain.

Therefore, Cynwyd cannot agree that the connection was "unauthorized." Nevertheless, Cynwyd immediately disconnected the drain upon notice from the utility that it considered the drain unauthorized.

UTILITY: No position taken.

STAFF: Yes.

ISSUE 5: If the utility did treat wastewater from an unauthorized connection received from Cynwyd's Friendship Hall swimming pool, what amount of wastewater was treated?

POSITIONS

COMPLAINANT: Unknown.

UTILITY: Utility has not addressed this issue as stated. Instead, utility states that Cynwyd violated TVU's tariff at Friendship Hall.

STAFF: No position pending further development of the record.

ISSUE 6: Is the utility's bill of approximately \$800.00 an appropriate charge for the amount of wastewater treated from an unauthorized connection received from Cynwyd's Friendship Hall swimming pool, if any?

POSITIONS

COMPLAINANT: Unknown. As Cynwyd understands this issue, it asks if \$800.00 is an appropriate charge for the treatment of "unauthorized" wastewater entering through the drain in the past. This amount is based on utility estimates of how much rainwater has entered the drain in the past. At this point, Cynwyd is unable to say whether the utility's estimates are reasonable.

UTILITY: No position taken.

STAFF: Yes, if source documents support the figure and the calculation is accurate.

ISSUE 7: Is Cynwyd liable for the \$800.00 bill from the utility for treatment of wastewater from an unauthorized connection received from Cynwyd's Friendship Hall swimming pool?

POSITIONS

COMPLAINANT: No. This particular drain was in place at the time of purchase of the system by TVU and thus the tariffed charges to Cynwyd for Friendship Hall included all the wastewater entering the drain because the drain connection was not unauthorized. Cynwyd does not know how parties to a business deal can go back and change parts of the deal retroactively. Additionally, if Friendship Hall's water and sewer charges are going to be handled piecemeal, it seems that Cynwyd should get a pro rata credit for future "authorized" wastewater (i.e. shower and pool water) that will not be treated by the utility since the drain was disconnected.

UTILITY: No position taken.

STAFF: If source documents support \$800.00, yes, they are liable for it. (Awaiting Production of Documents).

New Issues raised by Utility

ISSUE 8: Does the Commission have the authority to issue ex parte injunctions continued for over a year sua sponte?

POSITIONS

COMPLAINANT: No position taken.

UTILITY: No.

STAFF: This was addressed in Order No. PSC-93-1386-PCO-WS, issued September 22, 1993. Prehearing Officer stated that power to issue injunctions is reserved for circuit courts, but Commission does have power to issue emergency orders in performance of its regulatory duties.

ISSUE 9: Is a utility entitled to the protection of a bond in accordance with the Florida law when an injunction is entered against it?

POSITIONS

COMPLAINANT: No position taken.

UTILITY: Yes

STAFF: Question is moot. As noted in Issue 8 above no injunction has been issued.

VIII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Herbert Kurtz	Staff	HK-1	Howell F. Davis & Associates, Inc. report on mains dated 10-15-92 together with Tamiami RV Park summary of report dated 11/11/92 "central water system" attached to "Well Construction Permit Application"
	Staff	HK-2	Selected responses to staff interrogatories

	Staff	HK-3	Sales Contract from Cynwyd to SSU
Hank Thomas	Staff	HT-1	Court Orders and matters involving Department of Environmental Regulation
	Staff	HT-2	Source documentation for \$800.00 charge
	Staff	HT-3	Selected responses to staff interrogatories
	Staff	HK-1	Sales Contract from Cynwyd to SSU

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

IX. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

X. PENDING MOTIONS and MATTERS

Staff's request that official recognition be taken of Orders No. PSC-93-0810-FOF-WS, issued May 25, 1993, and PSC 92-0807-FOF-WS, issued August 11, 1992.

Motion to Compel Tamiami Village Utility to Produce Staff's 1st and 2nd Request for Documents, issued September 23, 1993.

XI. RULINGS


1. Cynwyd's Motion to Accept late-filed prehearing statement was granted.
2. Accepted Tamiami's Utility's late-filed prehearing statement without Motion.

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It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 5th day of October, 1993.



SUSAN F. CLARK, Commissioner and
Prehearing Officer

(S E A L)

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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 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.