

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 921206-WU  
certificate to provide water ) ORDER NO. PSC-94-1472-FOF-WU  
service in Pasco County by GEM ) ISSUED: November 30, 1994  
ESTATES UTILITIES, INC. )  
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The following Commissioners participated in the disposition of this matter:

SUSAN P. CLARK  
DIANE K. KIESLING

ORDER GRANTING CERTIFICATE  
TO PROVIDE WATER SERVICE

AND

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING MONTHLY RATE FOR WATER SERVICE

BY THE COMMISSION:

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

BACKGROUND

Gem Estates Utilities, Inc. (Gem) is a Class C utility which provides water service to Gem Estates Mobile Home Village in Pasco County. The utility was founded in 1974 by Marjorie Ruth and Lawrence Cahill. Hollis Mahlberg assumed operation of Gem in 1989, as trustee of the Marjorie Ruth Cahill Trust.

Gem has been operating without Commission approval since its inception. We first became aware of Gem as a result of a customer complaint regarding Gem Estates Mobile Home Village's intent to raise its maintenance fee. Water service was, at that time, included in the maintenance fee.

Initially, Gem applied for an exemption from regulation under the landlord-tenant exemption, Section 367.022(5), Florida Statutes. By Order No. PSC-92-0746-FOF-WU, issued August 4, 1992,

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we denied its request because its customers own their lots and because charges for water service were specifically referenced within the maintenance agreement. We also ordered Gem to file an application for an original certificate.

On November 20, 1992, Gem filed its application for a certificate. On May 7, 1993, a number of Gem's customers objected to Gem's application due to concerns over quality of service and their interest in receiving service from the City of Zephyrhills. Accordingly, this matter was set for hearing.

By Order No. PSC-93-1736-PCO-WU, issued December 3, 1993, as modified by PSC-94-0196-PCO-WU, issued February 15, 1994, the Prehearing Officer established procedures to be followed in this proceeding. According to the case schedule thereby established, the objectors' prefiled testimony was to be filed on or before June 20, 1994. Prehearing statements of all parties and the Staff of this Commission (Staff) were due to be filed on or before August 1, 1994. The objectors failed to file either prefiled testimony or a prehearing statement by the stated deadlines.

On August 3, 1994, Gem filed a motion to dismiss. In its motion, Gem pointed out that the Order Establishing Procedure for this case contained the following statement:

Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position.

Gem also noted that the prehearing statements of Gem and Staff raised only two issues: whether the Commission should issue a certificate; and the appropriate rates and charges. Gem argued that the issues raised in the customers' amended objection were not included among these issues and that the objectors had, in accordance with the above-noted language from Order No. PSC-93-1736-PCO-WU, waived their issues as well as any right to present testimony in support of their positions.

Gem also argued that, notwithstanding the above, the uncontroverted testimony of Gem's witnesses and the Department of Environmental Protection witness sponsored by Staff refuted the customers' quality of service concerns. As for the objectors' preference that they be served by the City of Zephyrhills, Gem pointed out that it had, at the suggestion of Staff, engaged in

discussions with the City and was informed that the City was not interested in purchasing the utility system.

By Order No. PSC-94-1069-FOF-WU, issued August 10, 1994, we granted Gem's motion to dismiss.

APPLICATION FOR CERTIFICATE

Gem's application is in compliance with Section 367.045, Florida Statutes, as well as our rules governing applications for certificates. The application contains a check in the amount of \$150.00, which is the correct filing fee under Rule 25-30.020, Florida Administrative Code. The applicant has also provided evidence, in the form of a warranty deed, that it owns the land upon which the utility facilities are located, as required by Rule 25-30.034(1)(e), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.034(1)(h), (i) and (j), Florida Administrative Code. A description of the territory requested by the applicant is appended hereto as Attachment A. The application also contains proof of compliance with the noticing requirements of Rule 25-30.030, Florida Administrative Code.

The utility employs a certified plant operator to run the system and is presently in good standing with the Department of Environmental Protection. With the backing of the trust, the utility appears to be financially viable. Ms. Mahlberg has also indicated her intention to file for a staff assisted rate case in the near future.

Based upon our discussion above, it appears to be in the public interest to grant Gem's application for a certificate. Accordingly, Gem is hereby granted Certificate No. 563-W to provide water service to the territory described in Attachment A.

RATES AND CHARGES

Since its inception in 1974, the residents of Gem Estates Mobile Home Village have paid for water service, street lighting, recreational facilities and upkeep of the common areas through a composite annual fee. It our practice when granting original certificates to existing utilities to "grandfather" the existing rates and charges. In preparation for the hearing, Gem retained a consultant to prepare a cost study to determine the appropriate rates for water service. This analysis shows a revenue requirement for Gem of \$12,143.81. To generate this amount, Gem would need to

collect, from each lot owner, \$56.48 per year, or \$4.71 per month. We have reviewed Gem's study and find it to be comprehensive and reasonable. Therefore, we approve the proposed monthly flat rate of \$4.71.

Due to equity and conservation concerns, we do not generally approve flat rates. However, where existing utilities serve unmetered customers, we have historically approved the flat rates pending the utility's next rate case. Gem has indicated that it intends to apply for a staff assisted rate case. We will consider metered rates and the associated costs at that time.

Gem has never collected deposits and does not have any miscellaneous service charges. Further, Gem is built out and has never charged service availability charges. Accordingly, by this Order, we only approve the monthly service rate.

The utility has filed a tariff that reflects the approved monthly service rate. Pursuant to Rule 25-30.475, Florida Administrative Code, the effective date of the tariff shall be the stamped approval date, provided the customers have received notice. The tariff will be approved upon staff's verification that it is consistent with our decision and that the proposed customer notice is adequate. The utility should provide proof that the customers have received notice within 10 days after the date of the notice.

It is, therefore,

ORDERED by the Florida Public Service Commission that Gem Estates Utilities, Inc. be and is hereby granted Certificate No. 563-W, to provide water service to the territory described in Attachment A which, by reference, is incorporated herein. It is further

ORDERED that the remaining provisions of this Order are issued as proposed agency action and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code. It is further

ORDERED that Gem Estates Utilities, Inc. is authorized to charge the monthly service rate approved herein for service rendered on or after the stamped approval date on its tariff, provided that customers have received notice. It is further

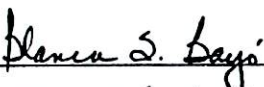
ORDERED that the tariff will be approved upon Staff's verification that the tariff is consistent with our decision and that the proposed customer notice is sufficient. It is further

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ORDERED that Gem Estates Utilities, Inc. shall provide proof of notice no later than ten (10) days after it is given. It is further

ORDERED that, unless a person whose interests are substantially affected by the action proposed herein files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, this Order shall become final and this docket shall be closed on the following date.

By ORDER of the Florida Public Service Commission, this 30th day of November, 1994.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( 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.

As identified in the body of this order, our approval of a monthly rate for water service 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-

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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 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 21, 1994. such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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 the relevant portion of 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.

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 Records and Reporting 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 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 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.

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ATTACHMENT A

GEM ESTATES UTILITIES INC.

TERRITORY DESCRIPTION

The following described lands located in portions of Section 12, Township 26 South, Range 21 East, Pasco County, Florida:

Section 12

The East 1/2 of the Northeast 1/4 of the Northwest 1/4 and that portion of the Northwest 1/4 of the Northeast 1/4 lying West of and adjacent to the Westerly right of way line of the Seaboard Coast Line Railroad, and LESS right of way of North Avenue.