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EMMER DEVELOPMENT CORP.

BUILDERS AND DEVELOPERS

2801 S.W. Archer Road • Gainesville, Florida 32608 • (352) 376-2444
Fax (352) 376-2260

January 6, 1997

Via UPS Overnight Delivery

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, FL 32399-0850

Re: Application for Certificate to Operate a Water and Wastewater Utility in Polk
County by Garden Grove Water Company, Inc., Docket No. **961299-WS**

Dear Ms. Bayo:

Enclosed for filing in the docket referenced above are the original and 15 copies each of Emmer
Development Corp.'s Motion to Dismiss Board of County Commissioners of Polk County's
Petition for Leave to Intervene and Request for Oral Argument. Please acknowledge your receipt
of these filings on the enclosed copy of this letter.

Thank you for your consideration.

Sincerely,

EMMER DEVELOPMENT CORP.

Claude R. Moulton
CLAUDE R. MOULTON
GENERAL COUNSEL

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIT _____
- OPC _____
- RCH _____
- SEC _____
- WAS _____
- OTH _____

Enclosure

CRM/tm

cc: Kathleen Johnson, Esq.
Wayne Schiefelbein, Esq.
Albert C. Galloway, Jr., Esq.
Mark F. Carpanini, Esq.

Golden Honorable Terry Deason, Prehearing Officer

request oral argument DOCUMENT NUMBER - DATE *Leave to intervene* DOCUMENT NUMBER - DATE

00154 JAN-75 00153 JAN-75

FPSC-RECORDS/REPORTING FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Certificate)
to Operate a Water and Wastewater)
Utility in Polk County by Garden)
Grove Water Company, Inc.)

Docket No. 961299-WS
Filed: January 7, 1997

EMMER DEVELOPMENT CORP.'S MOTION TO DISMISS BOARD OF
COUNTY COMMISSIONERS OF POLK COUNTY'S PETITION FOR LEAVE
TO INTERVENE

Pursuant to Florida Administrative Code Rule 25-22.037(2)(a), EMMER DEVELOPMENT CORP. ("Emmer") hereby moves to dismiss the Petition for Leave to Intervene ("Petition") filed by the Board of County Commissioners of Polk County ("Polk County") in the above captioned matter, and in support of its motion states the following:

1. Polk County does not have standing to participate in this proceeding. In order to have standing, an entity must demonstrate: (1) that it will suffer injury in fact which is of sufficient immediacy to entitle it to a formal proceeding; and (2) that its injury is of a type or nature which the proceeding is designed to protect. Agrico Chem. Co. v. Department of Env. Reg., 406 So. 2d 478, 482 (Fla. 1st DCA 1981) review denied, 415 So. 2d 1361 (Fla. 1982). Polk County has failed to satisfy either of these tests and, therefore, is not entitled to participate in this proceeding.

2. Polk County's Petition does not support its position. Polk County devotes a great deal of its Petition to restating arguments previously made at length by Garden Grove Water Company, Inc. ("Garden Grove"); however, its only argument that it should be permitted to intervene in this proceeding is:

- ACK _____
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- APP _____
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- CMU _____
- CTR _____
- ENG _____
- LEG _____
- WAS _____
- JTH _____

DOCUMENT NUMBER-DATE

00153 JAN-76

FPSC-RECORDS/REPORTING

Polk County's substantial interests in the instant proceeding are grounded upon its entitlement to ensure that its lawful orders are fully and faithfully executed. [Petition, page 7, section 20]

Although in the abstract this assertion certainly states one of the functions of any governmental body, it begs the question of whether Polk County is likely to suffer any injury in a proceeding before another governmental body, the Florida Public Service Commission (the "Commission"). In fact, Polk County fails to allege even one specific injury the County is even remotely likely to suffer as a result of this proceeding..

3. Polk County's position is inconsistent with its own actions. Of the few facts that none of the parties disputes, one clearly establishes the weakness of Polk County's assertions: Polk County voluntarily chose to abandon its jurisdiction over all the private utilities in Polk County. Now, Polk County is apparently attempting to reestablish itself as at least a co-regulator of one private utility. If in the future the Commission were to consider changing the rates charged by another Polk County private utility, would the County again come before the Commission claiming that the County had already set those rates?

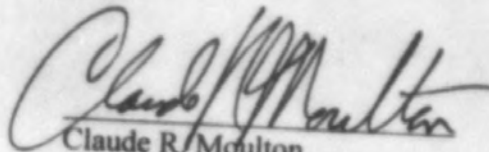
4. Polk County's position is untenable. Instead of attempting to establish the injury it will suffer if it is not permitted to participate in this proceeding, Polk County's Petition is almost exclusively devoted to arguing the merits of Garden Grove's case against Emmer and the City of Lake Wales. Polk County clearly is taking an advocacy role on behalf of Garden Grove. Yet, at the same time, Polk County asserts that it acted in a quasi-judicial capacity in adjudicating Garden Grove's dispute with Emmer [Petition, page 6, section 16]. This position is analogous to the unseemly spectacle of a trial judge determining that he does not have jurisdiction over a case before him and then, while still wearing his judicial robes, seeking to intervene before a subsequent court as an advocate on behalf of one of the litigants and arguing as part of his petition that he would personally be damaged if that court ruled against his client.

5. Finally, the real party in interest in this proceeding, Garden Grove, is well-represented, and Polk County's intervention on behalf of Garden Grove is unnecessary to the fair resolution of the issues before the Commission.

WHEREFORE, Emmer respectfully requests that the Commission:

- (a) deny Polk County's Petition to Intervene; and
- (b) grant such other relief as the Commission deems appropriate.


Respectfully submitted,
EMMER DEVELOPMENT CORP.



Claude R. Moulton
General Counsel
Florida Bar No. 84207
2801 SW Archer Road
Gainesville, Florida 32608
(352) 376-2444

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by United States mail to Kathleen Johnson, Staff Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; Wayne Schiefelbein, Gatlin, Woods & Carlson, 1709-D Mahan Drive, Tallahassee, Florida 32308; Albert C. Galloway, Jr., Bradley Johnson Law Firm, P.A., P.O. Box 1260, Lake Wales, Florida 33859-1260; and Mark F. Carpanini, Polk County, P.O. Box 9005, Drawer AT01, Bartow, Florida 33831-9005, this 6th day of January, 1997.



Claude R. Moulton