BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Bayside Mobile Home Park against Bayside Utility Services, Inc. regarding denial of request for water and wastewater service in Bay County.	DOCKET NO. 010726-WS ORDER NO. PSC-02-0247-FOF-WS ISSUED: February 26, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

SUMMARY FINAL ORDER

BY THE COMMISSION:

BACKGROUND

On May 11, 2001, Bayside Mobile Home Park (Developer) filed a complaint against Bayside Utility Services, Inc. (BUSI or utility), alleging that the utility was improperly refusing to provide service in its territory. In its complaint, the Developer claims that the only applicable charges listed in the utility's tariff are the $15 Initial Connection Fee and the "$300 Service Availability Fee for Main Extension Charge." The Developer claims that the utility should be responsible for paying Panama City Beach's (City's) impact fees and for incurring the cost of installing the water distribution and wastewater collection lines.

The utility states that it is not refusing to provide service and argues that the Developer should be responsible for paying the City's impact fees and for paying the costs of installing the water distribution and wastewater collection lines. The utility, a wholly-owned subsidiary of Utilities, Inc., is a Class C water and

wastewater utility that purchases water and wastewater services from the City.

The Developer was established in 1972, and was purchased by Bayside Partnership in 1984. Bayside Utilities, Inc., the former utility, was formed in 1987, and was a wholly owned subsidiary of Bayside Partnership.

Through an Asset Purchase Agreement (sales contract) executed on October 7, 1998, and for a cash purchase price of $190,000, BUSI, the current utility, purchased the assets of Bayside Utilities, Inc. By Order No. PSC-99-1818-PAA-WS, issued September 20, 1999, we approved the transfer of Certificates Nos. 469-W and 358-S from Bayside Utilities, Inc. to BUSI.

The Developer states that it began plans for expansion in 1997, and hired engineers to assist in plans for the development of vacant property. The new expansion area is to include 65 new lots for mobile homes and 10 lots for single-family, waterfront residences on the bay. This expansion was to take place in an unoccupied area in the northwest section of the utility's service area. The area is currently being used for garbage receptacles and parking for various sports recreation equipment.

An ordinance of the City imposes an impact fee on additional connections to the water and wastewater systems. The Developer forwarded a schedule of these proposed fees to the utility, which included a fee of $2,420.78 for each mobile home added to the system and $2,796.02 for each single family residence added to the system. The total impact fees required by the City totaled $185,310.90. The Developer stated that the utility should pay the fees. The utility disagreed, and advised the Developer that the Developer would be responsible for the impact fees imposed by the City.

In a letter to the utility and this Commission dated March 6, 2000, the Developer argued that the utility's tariff indicates that the main extension charge is $300 per connection. The Developer also argued that the utility is responsible for supplying water and wastewater service to the proposed lots since they were in the prescribed service area. In addition, the Developer suggested to the utility that the tariff should be changed to accommodate the impact fee imposed by the City.

The Developer's General Manager, Leonard Jeter, met with the City Manager of the City, Richard Jackson, on the matter of the impact fees. Mr. Jackson informed Mr. Jeter that it is typical for the end user or purchaser of a lot to pay the impact fees for the water and sewer connections at the time the lot is purchased and construction is initiated. Although it appeared that the portion of the complaint concerning the City's impact fees had been resolved, the Developer advised our staff that this was not the case.

The Developer maintains that the City's impact fees are owed by and should be paid by the utility. Notably, by letter dated March 21, 2000, Mr. Jeter admitted that the problem of the impact fees was solved when the City agreed that "the burden of paying the impact fees" was "on the lot purchaser, where it should be." Despite the fact that the Developer acknowledges the lot purchaser should pay the impact fee, the Developer believes that the utility should still consider revising its tariff to include the impact fees to the City.

In addition, the parties continue to disagree as to who is responsible for the installation of the water service lines and the wastewater collection lines in the proposed development. In a letter to the utility dated April 25, 2000, the Developer made its position clear that it thought it was the responsibility of the utility to provide the water and wastewater extensions into the proposed development. The Developer stated that it would not make sense for them to install the needed system and then hand it over to the utility free of charge for the utility to make a profit. The Developer did correctly note that a donated system would not add to utility rate base and would not allow any additional return because it would be considered contributions-in-aid-of-construction (CIAC). The Developer also made it clear that it wished to be reimbursed for the engineering expenses that were associated with the planning of the water and wastewater systems of the proposed development.

On March 2, 2001, the utility submitted a developer's agreement to the Developer in an effort to clarify any misunderstanding about responsibility for the proposed extension. The proposed agreement indicated that the Developer would be liable for the installation of the proposed water distribution and wastewater collection lines and that the Developer would have to

essentially warranty the lines against malfunctions or breaks for a period of one year. The Developer refused to sign the proposed developer agreement on the grounds that the utility has, in its tariff, only the main extension charges of $300 per connection. The Developer believes that it should only be charged $300 for each of the additional 75 connections within the proposed development area. These charges would only account for $22,500 of the estimated $100,000 to $150,000 necessary to complete the extension of the water and wastewater systems.

On May 11, 2001, the Developer filed a complaint with us pursuant to Rule 25-30.540(4), Florida Administrative Code, which states: "If an applicant [for service] believes the charges required by a utility pursuant to subsections (2) and (3) are unreasonable, the applicant may file a complaint with the Commission in accordance with Chapter 25-22, F.A.C." The complaint alleges that the utility is in violation of Rule 25-30.520, Florida Administrative Code, which provides: "It is the responsibility of the utility to provide service within its certificated territory in accordance with terms and conditions on file with the Commission."

In its complaint, the Developer asked us to determine who is financially responsible for the installation of the water distribution and wastewater collection lines. Our staff filed its original recommendation in this complaint docket on August 23, 2001, for our consideration at the September 4, 2001, Agenda Conference. However, at the Developer's request, consideration of this item was deferred. After the recommendation was filed, the Developer submitted additional responses to staff discovery.

By letter dated September 12, 2001, the utility stated that it agreed with our staff's original recommendation, which was that the Developer was responsible for installation of the water distribution and wastewater collection lines. Moreover, the utility noted that the additional responses to discovery filed by the Developer would not have affected our staff's original recommendation.

On September 20, 2001, our staff filed a revised recommendation to address the additional discovery responses, but did not change its ultimate recommendation. Upon consideration of this revised recommendation, we issued Proposed Agency Action (PAA) Order No. PSC-01-2095-PAA-WS on October 22, 2001. By that PAA

Order, we determined that the Developer (or the purchasers of the lots) was responsible for City impact fees, and that the Developer was also responsible for the installation of the water distribution and wastewater collection lines. In addition, in that Order we required the utility to timely inspect and respond to plans and specifications for on-site development. Also, in that Order, by final agency action, we declined to initiate an investigation into deletion of the utility's service territory.

On November 13, 2001, the Developer filed its Petition Filing a Formal Protest to the Proposed Agency Action by a Substantially Affected Person (Original Protest). In the Original Protest, the Developer requested:

1) Mediation; Either binding or non binding but preferably binding.
2) Arbitration, binding on all parties including the PSC and The Commissioners.
3) Administrative Hearing, binding on all parties including the PSC and The Commissioners.

The Developer alleged that we wrongly relied on Rule 25-30.580 (Guidelines for Designing Service Availability Policy), Florida Administrative Code, when we should have been following Rule 25-30.520 (Responsibility of Utility to Provide Service), Florida Administrative Code.

Two days after filing the Original Protest, the Developer filed its Petition to Amend Petition as Per Rule 28-106.202, Florida Administrative Code (Amended Protest). In this Amended Protest, the Developer requests that pursuant to Rule 28-106.201(3), Florida Administrative Code, this Commission "'refer this matter to the Division of Administrative Hearings [DOAH] and request that an Administrative Law Judge be assigned to conduct the hearing' as soon as possible." Moreover, the Developer requested that pursuant to Rule 28-106.207(1), Florida Administrative Code, the hearing be conducted in Panama City Beach.

On November 15, 2001, the utility filed its Response and Motion to Dismiss the Developer's Petitions, Protests and Requests for Hearing. The developer did not respond to the Motion to Dismiss. This Summary Final Order addresses the Developer's

Petitions (Protests) and the Response and Motion to Dismiss of the utility.

We have jurisdiction pursuant to Sections 367.101 and 367.121, Florida Statutes.

DECISION

As grounds for dismissal, the utility argues that the protests are untimely. The PAA Order was issued on October 22, 2001, and stated that any protest had to be filed by no later than November 12, 2001. However, November 12, 2001, was a holiday. In considering protests of PAA Orders, we have recognized that where the twenty-first day falls on a holiday or weekend, then the time should be extended to the next working day. This comports with Rule 28-106.103, Florida Administrative Code. Therefore, our Order should have referred to November 13, 2001, and not November 12, 2001. The Original Protest was filed with this Commission on November 13, 2001, and the Amended Protest was filed on November 15, 2001. Also, we note that the utility received both protests by facsimile on November 13, 2001. Therefore, we find that the argument that the protests were untimely is not valid.

The utility also argues that the two petitions filed by the Developer do not state a specific basis, whether factual or legal, for the Developer's request for action by this Commission. The utility notes that the Developer quotes Rule 25-30.520, Florida Administrative Code, regarding the "responsibility of the utility to provide service within its certificated territory," and states that the utility has not refused service to the Developer.

Moreover, The utility states that our actions are in conformance with Rules 25-30.585 and 25-30.580, Florida Administrative Code. Rule 25-30.585, Florida Administrative Code, states:

> Subject to the limitation in Rule 25-30.580, service availability charges for real estate developments shall not be less than the cost of installing the water transmission and distribution facilities and sewage collection system and not more than the developer's hydraulic share of the total cost of the utility's facilities and the cost of installing the water

> transmission and distribution facilities and sewage collection system.

Rule 25-30.580, Florida Administrative Code, states that the maximum amount of CIAC, "net of amortization, should not exceed 75% of the total original cost" of the utility's facilities and plant, and that the minimum amount "should not be less than the percentage of such facilities and plant that is represented by the water transmission and distribution and sewage collection systems." The utility alleges that its current level of CIAC is only 4.5%, which is far below the 75% maximum level, and that acceptance of the distribution and collection systems would only raise its level to 27%.

In addition to the above, the utility argues that both petitions fail to allege any factual or legal basis upon which this Commission either must or even may require a hearing or grant any other relief, and that the Developer has not complied with the requirements of Rule 28-106.201(2), Florida Administrative Code, and in particular, subsections (2)(d) and (e), which provide:

> (2) All petitions filed under these rules shall contain:
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> * * *
>
> (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
>
> (e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief.

We agree that the Developer has not complied with subparagraph (2)(d) above. Moreover, from a review of the Developer's petitions, it appears that there are no disputed issues of material fact.

The Developer is merely arguing that we are improperly considering Rules 25-30.580 and 25-30.585, Florida Administrative Code, the rules on service availability charges, and should be applying Rule 25-30.520, Florida Administrative Code, the rule on the responsibility of the utility to provide service. Because the Original Protest and Amended Protest show that there are no disputed issues of material fact, we find that there are only issues of law and that this proceeding may be properly dealt with by issuance of a Summary Final Order.

We have considered the above-noted allegations, and find that we did thoroughly consider Rules 25-30.520, 25-30.580, and 25-30.585, Florida Administrative Code, and reached the correct result when we issued PAA Order No. PSC-01-2095-PAA-WS. Therefore, we hereby deny the protests and requests of the Developer for additional proceedings, and reaffirm our decisions in Order No. PSC-01-2095-PAA-WS, whereby we found that:

1. Bayside Mobile Home Park shall be responsible for all costs associated with the installation of the wastewater collection lines, manholes, and water distribution lines throughout the proposed development if it wishes to receive water and wastewater services from Bayside Utility Services, Inc;

2. Bayside Utility Services, Inc. shall not be required to reimburse Bayside Mobile Home Park for the engineering costs associated with this development; and

3. Pursuant to Rule 25-30.540, Florida Administrative Code, the engineering plans for the development are subject to the approval of Bayside Utility Services, Inc. However, Bayside Utility Services, Inc. shall properly review any engineering plans submitted and respond in a timely manner as to the adequacy of the plans, in order to not further delay the development or cause any undue hardship for the developer.

Our rulings set forth above are final rulings and completely resolve all pending matters in this complaint docket. Therefore, we need not rule on the utility's Motion to Dismiss, and this docket may now be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Bayside Mobile Home Park's Petition Filing a Formal Protest to the Proposed Agency Action by a Substantially Affected Person and Petition to Amend Petition as Per Rule 28-106.202, Florida Administrative Code, are hereby denied. It is further

ORDERED that Bayside Mobile Home Park shall be responsible for all costs associated with the installation of the wastewater collection lines, manholes, and water distribution lines throughout the proposed development if it wishes to receive water and wastewater services from Bayside Utility Services, Inc. It is further

ORDERED that Bayside Utility Services, Inc. shall not be required to reimburse Bayside Mobile Home Park for the engineering costs associated with this development. It is further

ORDERED that pursuant to Rule 25-30.540, Florida Administrative Code, the engineering plans for the development are subject to the approval of Bayside Utility Services, Inc. However, Bayside Utility Services, Inc. shall properly review any engineering plans submitted and respond in a timely manner as to the adequacy of the plans, in order to not further delay the development or cause any undue hardship for the developer. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of February, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.