

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for amendment to Certificates 247-W and 189-S in Seminole County by Sanlando Utilities Corporation. | DOCKET NO. 040384-WS
ORDER NO. PSC-06-0070-PCO-WS
ISSUED: January 26, 2006

ORDER GRANTING MOTION TO STRIKE TESTIMONY,
DENYING REQUEST TO DISMISS OBJECTION, AND
REQUIRING REILING OF TESTIMONY AND EXHIBITS
BY INTERVENOR CITY OF LONGWOOD

On October 17, 2005, Order Establishing Procedure No. PSC-05-1001-PCO-WS was issued in this docket, establishing the procedural schedule and requirements which are to be followed by staff and the parties in this docket. The order requires each party to prefile, in writing, all testimony that it intends to sponsor, including each exhibit intended to support a witness' prefiled testimony. The order further provides that the failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Order No. PSC-05-1001-PCO-WS required that intervenor direct testimony and exhibits be filed by December 30, 2005. The City of Longwood (Longwood), an intervenor to the docket, timely filed testimony for witnesses Richard Kornbluh, Ronald P. Ferland, and Thomas Jensen. However, on January 10, 2006, Sanlando Utilities Corporation (Sanlando), filed a Motion to Strike Testimony of City of Longwood (Motion). On January 13, 2006, Longwood filed a Response to Sanlando's Motion, together with the Amended Direct Testimony of Richard Kornbluh.

In support of its Motion, Sanlando contends that Longwood failed to comply with the requirements of Order No. PSC-05-1001-PCO-WS, in that none of the documents to which Mr. Kornbluh refers in his testimony was attached to his testimony. Sanlando contends that these documents provide the evidence on which Longwood asserts its right to serve the customers in the area in dispute. Without providing a basis for its claims, Sanlando contends that the City has failed to establish that it has standing to object to Sanlando's application for amendment. Sanlando concludes that, "having failed to provide evidence of its rights to serve the disputed area, and established its standing to object to the Application, the City's testimony should be stricken and its objection dismissed."

In its Response, Longwood states that it never received its copy of Order No. PSC-05-1001-PCO-WS, and that it was unaware of its existence or requirements until on or about December 28, 2005, during a telephone conversation with Commission legal staff. Longwood contends that Mr. Kornbluh's testimony should not be stricken, because all of the documents referred to in his testimony have been previously filed with the Commission and provided to Sanlando. The "Amended Testimony" filed by Longwood includes the previously missing documents which is referenced in Sanlando's Motion.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Having reviewed the testimony in question, a more serious defect has been identified than that which is referenced in Sanlando's Motion. The purpose of requiring prefiled testimony is to ensure the case will be presented in an organized manner, and to fully apprise all parties, staff, and the Commission of positions in order to mitigate confusion and eliminate the use of surprise as a tactic in the hearing. However, Messrs. Kornbluh, Ferland, and Jensen's testimonies state only what the purpose of their testimony is, without actually providing the testimony itself.¹ Documents are referenced, but no testimony is provided as to the import of those documents. This is wholly inconsistent with the purpose of prefiled testimony, as is the practice before this Commission. It is further noted that the exhibits which are attached to Longwood's testimony are not identified in accordance with the requirements of Order No. PSC-05-1001-PCO-WS.

Having reviewed the pleadings, in consideration of fairness to all parties and mindful of the current hearing schedule, I find that Sanlando's request to strike Mr. Kornbluh's testimony shall be granted. In addition, I find that the testimonies of Mr. Jensen and Mr. Ferland shall also be stricken, as being noncompliant with the requirements of Order No. PSC-05-1001-PCO-WS. Sanlando's request to dismiss Longwood's objection, however, is denied. Instead, Longwood is ordered to refile the testimony and exhibits it intends to sponsor in this docket, within seven days of the date of issuance of this Order, in a manner which comports with Order No. PSC-05-1001-PCO-WS, and consistent with the standards of practice before this Commission. The refiled testimony shall set forth with specificity the basis for Longwood's objection, and the feasibility of Longwood serving the disputed territory.

Having reviewed the current procedural schedule, I find that fairness to the parties and staff requires a commensurate revision of the current dates for filing rebuttal testimony and prehearing statements. This will afford the parties and staff sufficient time to review Longwood's refiled testimony in preparation for rebuttal testimony and prehearing statements. The current hearing schedule should permit sufficient time for revising these dates, without compromising the current prehearing and hearing dates. Therefore, the following revised dates shall govern this case:

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|------------------------------------|-------------------|
| 1) Rebuttal testimony and exhibits | February 17, 2006 |
| 2) Prehearing Statements | February 17, 2006 |

If Longwood has any question regarding the appropriate manner in which its testimony and exhibits are to be refiled, it is expected to contact Commission staff for assistance. Sanlando's Motion correctly points out that Longwood is represented by legal counsel, and that Longwood is bound by the same rules as any other party in this docket. Longwood is cautioned that it is expected to familiarize itself and comply with the requirements of Order No. PSC-05-1001-PCO-WS, and this Commission's rules and statutes. Further noncompliance may result in the dismissal of Longwood's objection from this proceeding.

¹ For example, Mr. Kornbluh states that "[he] will provide testimony" on a number of matters in support of Longwood's objection. However, this concludes his testimony, and no actual discussion of these areas is provided. This is also true of witnesses Ferland and Jensen's testimonies.

Based on the foregoing, it is


ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Sanlando Utilities Corporation's Motion to Strike Testimony of City of Longwood is granted, as set forth in this Order. It is further

ORDERED that Sanlando Utilities Corporation's request to dismiss the City of Longwood's objection is denied. It is further

ORDERED that the City of Longwood shall refile its testimony and exhibits, within seven days of the issuance of this Order, in a manner that comports with Order No. PSC-05-1001-PCO-WS, and consistent with the standards of practice before this Commission. It is further

ORDERED that the controlling dates for filing rebuttal testimony and prehearing statements established in Order No. PSC-05-1001-PCO-WS is modified as set forth in the body of this Order. Order No. PSC-05-1001-PCO-WS is reaffirmed in all other respects.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 26th day of January, 2006.


J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

JSB

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.