

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request by Volusia) DOCKET NO. 930035-TL
County Council to move the Lake) ORDER NO. PSC-94-1281-FOF-TL
Ashby Community from the Sanford) ISSUED: October 17, 1994
exchange into the New Smyrna)
Beach exchange.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING MOTION FOR RECONSIDERATION
AND REAFFIRMING ORDER TO MOVE LAKE ASHBY COMMUNITY
FROM SANFORD EXCHANGE TO NEW SMYRNA BEACH EXCHANGE

BY THE COMMISSION:

I. BACKGROUND

On December 2, 1992, the Volusia County Council filed a request to survey the Lake Ashby area to determine whether the community was in favor of being moved from the Sanford exchange, primarily located in Seminole County, to the New Smyrna Beach exchange located in Volusia County.

By Order No. PSC-93-1701-FOF-TL, issued November 24, 1993, the Commission required Southern Bell to ballot the 170 Lake Ashby customers to determine if they would be in favor of moving from the Sanford exchange into the New Smyrna Beach exchange with an additive of \$3.38 per month for a period of ten years. The survey was to be conducted within 30 days of the date that Order became final. The Order became final on December 16, 1993.

By Order No. PSC-93-1701-FOF-TL, the Commission determined to utilize the same guidelines for balloting as extended area service (EAS). Rule 25-4.063(6), Florida Administrative Code, requires a majority of all respondents in each exchange to vote favorably and at least 40% of all ballots sent must be returned.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Based on Rule 25-4.063(6), Florida Administrative Code, the survey passed since 51.67% of the ballots returned were in favor of changing the exchange service area from Sanford to New Smyrna Beach. The results of this survey were initially scheduled to be heard at the April 5, 1994 agenda.

Because the survey was so close (Favor - 51.67% / Oppose - 48.33%), Volusia County requested a 60 day deferral to further review the customer list provided by Southern Bell and to try to develop alternatives to the original exchange boundary proposal to satisfy a greater percentage of the people involved.

On May 31, 1994, the Volusia County Council filed a modification to its original boundary change request. On June 10, 1994, members of the Commission staff met with Volusia County Council representatives and representatives of Southern Bell in the Lake Ashby community to review the proposed options.

By Order No. 94-1025-FOF-TL, the Commission approved the boundary change. The change was based on the results of the survey. This decision is consistent with Order No. 93-1701-FOF-TL.

The Commission acted on the results of the survey in accordance with Order No. PSC-93-1701-FOF-TL and required that Southern Bell change the Lake Ashby service area from the Sanford exchange to the New Smyrna Beach exchange in Order No. PSC-94-1025-FOF-TL.

II. MOTION FOR RECONSIDERATION

On September 2, 1994, the Volusia County Council filed a Motion for Reconsideration of Order No. PSC-94-1025-FOF-TL, issued on August 23, 1994.

The purpose of a petition for rehearing is merely to bring to the attention of...the administrative agency, some point which it overlooked or failed to consider when it rendered its Order in the first instance. It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the Order. Diamond Cab Company of Miami v. King, 146 So.2d 889, 891 (Fla. 1962).

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Pursuant to Rule 25-22.060(2), such a Motion must be based on specific reasons which must be concisely stated. In this case, the Volusia County Council has failed to reveal any point which we overlooked or failed to consider. The Volusia County Council has simply re-stated its previous preference to alter its original request.

The Volusia County Council alleges in its Motion that the Commission did not consider its Resolution 94-200 with two proposals for alternative solutions amending its original request. In fact, the Council merely repackaged Proposal 4 and 5 in its Resolution No. 94-200 and gave a copy of the Resolution to the Commission at the August 2, 1994 Agenda Conference. This does not change the fact that these proposals had already been considered. Both of the alternative solutions suggested by the Council were considered and ruled on as "Proposals 4 and 5" in the body of Order No. PSC-94-1025-FOF-TL.

Since the Commission reviewed and considered the Volusia County Council's proposals to its amendment of its original request and ruled on them in Order No. PSC-94-1025-FOF-TL, the county's assertion to the contrary in its Motion is inaccurate. The County has failed to raise any error of fact or law on any matter which the commission overlooked or failed to consider. The Volusia County Council's Motion for Reconsideration is, thus, denied. The County's request for a survey of the north portion of the Lake Ashby community in this Motion is, likewise, denied.

Based on the foregoing, it is

ORDERED that the Volusia County Council's Motion for Reconsideration is denied. It is further

ORDERED the County's request for a survey of the north portion of the Lake Ashby community in it's Motion for Reconsideration is denied. It is further

ORDERED that the Sanford exchange be moved into the New Smyrna Beach exchange in accordance with Orders No. PSC-93-1701-FOF-TL and PSC-94-0184-FOF-TL. It is further

ORDERED that this docket is closed. This docket will remain on monitor status until Southern Bell files the appropriate tariffs.

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By ORDER of the Florida Public Service Commission, this 17th
day of October, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SHS

by: Kay Lynn
Chief, Bureau of Records

NOTICE OF 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 the Commission's final action in this matter may request 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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, 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.