



Public Service Commission

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DATE: SEPTEMBER 23, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYB)

FROM: DIVISION OF APPEALS (HELTON) *ma*
DIVISION OF WATER AND WASTEWATER (MESSER) *66M GND*

RE: DOCKET NO. 982002-WS - PETITION OF ST. JOHNS SERVICE COMPANY FOR DECLARATORY STATEMENT ON APPLICABILITY AND EFFECT OF 367.171(7), F.S.
COUNTY: ST. JOHNS

AGENDA: 10/5/99 - REGULAR AGENDA - DECISION ON DECLARATORY STATEMENT - PARTIES MAY PARTICIPATE AT THE COMMISSION'S DISCRETION

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\APP\WP\982002AM.RCM

CASE BACKGROUND

St. Johns Service Company (petitioner or the utility) filed a petition for declaratory statement on December 29, 1998, concerning the applicability and effect of Section 367.171(7), Florida Statutes, to its service arrangement with two not-for-profit homeowners associations that serve customers in Duval County. Staff's recommendation on the merits of this petition was deferred from the February 16, 1999, agenda at the petitioner's request. The petitioner also waived the 90-day statutory deadline in Section 120.565(3), Florida Statutes. The utility filed an amended petition for declaratory statement on July 9, 1999. As discussed below, staff recommends the amended petition be granted in the affirmative.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant St. Johns Service Company's amended petition for declaratory statement?

RECOMMENDATION: Yes, the Commission should grant the amended petition for declaratory statement in the affirmative and declare that the service arrangement discussed below between the petitioner and the homeowners associations does not render St. Johns Service Company subject to the jurisdiction of the Florida Public Service Commission, and the provisions of Section 367.171(7), Florida Statutes, are not applicable because St. Johns Service Company is not a utility system whose service transverses the boundary of St. Johns and Duval Counties. (HELTON, MESSER)

STAFF ANALYSIS: Pursuant to Section 120.565(1), Florida Statutes:

[a]ny substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

The petitioner is a water and wastewater company whose utility activities are regulated by St. Johns County. Among its customers are two homeowners associations that take bulk water and wastewater service from the utility. These homeowner associations, Sawgrass Homeowners Association VII, Inc. (SHA VII),¹ and Sawgrass Homeowners Association VIII, Inc. (SHA VIII),² serve customers in Duval County (collectively referred to as SHA or the associations). The petitioner's point of delivery to the associations, however, is in St. Johns County.

¹ SHA VII is currently receiving service from the petitioner.

² SHA VIII is not currently receiving service from the petitioner, but plans to do so in the future. For purposes of this recommendation, the recommended declaration assumes that SHA VIII currently owns and operates distribution facilities to serve customers in Duval County. This assumption can be made because the legal analysis is the same regardless whether the homeowners association either currently serves or proposes to serve customers in Duval County using distribution and collection lines that it either owns now or plans to own in the future.

Coastal Operating Services, Inc., a contract operator, was created to perform all maintenance, billings, collections, and turn on and turn offs for SHA. Though related to the utility, this contract operator is a separate corporate entity. A developer's agreement governs the relationship between SHA, the utility, and the contract operator.

The question the petitioner wants resolved is whether Section 367.171(7), Florida Statutes, requires the Commission to regulate the utility because of the service arrangement with the homeowners associations. The pertinent part of this statute provides:

the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional

Section 367.171(7), Florida Statutes (emphasis supplied). The utility seeks an answer to this question because St. Johns Water and Sewer Authority's (the Authority's) attorney has recommended that the Authority refrain from actively regulating the petitioner until the Commission determines its jurisdiction has not been invoked by the service arrangement at issue here.

Because of the unique arrangement between SHA, the contract operator, and the utility, there are several aspects of the developer's agreement that should be brought to the Commission's attention. Upon demand, SHA must transfer all of its utility facilities behind the point of delivery in St. John's County to petitioner. In the event the utility demands such a transfer, SHA will also transmit "appropriate" bills of sale to the utility. Although the utility does not serve customers in SHA's service area, each SHA customer must submit a standard application to the utility for approval. The contract operator will perform all billing and collection activities, and the contract operator will cut off service to customers who do not pay using the utility's policies and rules. In the event there are line losses in SHA's service area that are out of SHA's control, the utility will credit SHA so that the association is never charged for the lost water.

Despite these unique provisions, staff recommends that the Commission declare that its jurisdiction under Section 367.171(7) has not been invoked based on the following facts alleged in the petition: The petitioner provides service exclusively to customers in St. Johns County. Only the homeowners associations own distribution and collection facilities in Duval County, which are operated by the contract operator. The contract operator performs

all maintenance, billings, collections, and turn on and turn offs. The homeowners associations receive service from the petitioner at a point of delivery in St. Johns County at a bulk rate approved by the St. Johns Water and Sewer Authority. The petitioner does not provide service to any active customer connections in Duval County. No customer connection charges, customer installation fees, developer agreements, or other contractual arrangements exist between any customers in Duval County and the petitioner other than the delivery of bulk service to the homeowners associations in St. Johns County. The petitioner does not own any lines or appurtenant facilities on the homeowners associations' side of the point of delivery. Under these facts, the service provided by the petitioner in St. Johns County does not transverse county boundaries. Thus, Section 367.171(7), Florida Statutes, does not act to invoke the Commission's jurisdiction over the utility in this particular circumstance.

Staff's recommendation is consistent with the legislative intent behind Section 367.171(7), Florida Statutes. When the Legislature enacted this provision in 1989, it "intended to eliminate the regulatory problems that exist when utility systems provide service across political boundaries and are subject to economic regulation by two or more regulatory agencies" In re: Petition of General Development Utilities, Inc., for Declaratory Statement Concerning Regulatory Jurisdiction over its Water and Sewer System in DeSoto, Charlotte, and Sarasota Counties, Order No. 22459, 90 F.P.S.C. 1:396 (1990). In this case, the petitioner serves only customers in St. Johns County, and its customers pay rates and charges regulated by only one regulatory authority.

In addition, staff's recommendation is consistent with Town of Jupiter v. Village of Tequesta, 713 So. 2d 429 (Fla. 4th DCA 1998). While Jupiter concerned a different statutory scheme than the question before the Commission, it is relevant because the court had to address whether Jupiter operated a water system in Tequesta when Jupiter supplied Tequesta bulk potable water at a point of delivery. The court noted:

Jupiter neither hooks up nor disconnects any customers within Tequesta; it has no pumps or meters within Tequesta; it reads no customer meters there; it sends no bills there; indeed it has no contact of any kind in Tequesta with any consumer of potable water.

713 So. 2d at 431. Thus, the court concluded that:

DATE: September 23, 1999

[p]roviding Tequesta with bulk potable water at a point of delivery does not, in our opinion, constitute actual operation by Jupiter within Tequesta's consumer service area.

Id. Similarly, since the petitioner has no direct relationship with actual consumers in Duval County, the petitioner does not provide service in Duval County.

Based on the discussion above, staff recommends that the Commission answer the petition in the affirmative and declare, as requested by the petitioner, that the service arrangement described above between the petitioner and the homeowners associations does not render St. Johns Service Company subject to the jurisdiction of the Florida Public Service Commission, and the provisions of Section 367.171(7), Florida Statutes, are not applicable here because St. Johns Service Company is not a utility system whose service transverses the boundary of St. Johns and Duval Counties. Any change in the facts as they are set out above may significantly alter or even void the Commission's declaratory statement.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission votes to dispose of the petition for declaratory statement, the docket should be closed.

STAFF ANALYSIS: If the Commission answers the petition, a final order can be issued and the docket closed.