

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of St. Johns  
Service Company for declaratory  
statement on applicability and  
effect of 367.171(7), F.S.

DOCKET NO. 982002-WS  
ORDER NO. PSC-99-2034-DS-WS  
ISSUED: October 18, 1999

The following Commissioners participated in the disposition of  
this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.

ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

Pursuant to Section 120.565(1), Florida Statutes, St. Johns Service Company (petitioner or the utility) filed a petition for declaratory statement on December 29, 1998, concerning the applicability of Section 367.171(7), Florida Statutes, to its service arrangement with two not-for-profit homeowners associations that serve customers in Duval County. The petitioner waived the 90-day statutory deadline in Section 120.565(3), Florida Statutes and on July 9, 1999, filed an amended petition for declaratory statement, which we grant for the reasons discussed below.

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),<sup>1</sup> and Sawgrass Homeowners Association VIII, Inc. (SHA VIII),<sup>2</sup> serve customers in

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<sup>1</sup> SHA VII is currently receiving service from the petitioner.

<sup>2</sup> SHA VIII is not currently receiving service from the petitioner, but plans to do so in the future. Our order assumes that SHA VIII currently owns and operates distribution facilities

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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.

Coastal Operating Services, Inc., a contract operator, was created to perform all maintenance, billings, collections, turn ons 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 we determine whether our jurisdiction has been invoked by the service arrangement at issue here.

There are several provisions in the service arrangement that make this situation unique. For instance, 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

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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.

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. Finally, the service arrangement provides that 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. If such a transfer were to occur, we find that our jurisdiction would be invoked under Section 367.171(7), Florida Statutes.

Despite these unique provisions, we declare that our 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, turn ons, 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 our jurisdiction over the utility in this particular circumstance.

Our decision 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, our declaration is consistent with Town of Jupiter v. Village of Tequesta, 713 So. 2d 429 (Fla. 4th DCA 1998). While that case concerned a different statutory scheme than the question before us, it is relevant because the court had to address whether the city of 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:

[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 foregoing, we 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

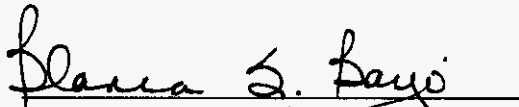
change in the facts as they are set out above may significantly alter or void the Commission's declaratory statement.

It is therefore

ORDERED by the Florida Public Service Commission that St. Johns Service Company's amended petition for declaratory statement is granted in the affirmative as discussed above. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 18th day of October, 1999.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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.

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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 Records and Reporting, 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 Records and reporting 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.