

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment
of Certificate No. 106-W to add
territory in Lake County by
Florida Water Services
Corporation.

DOCKET NO. 991666-WU
ORDER NO. PSC-00-2464-PCO-WU
ISSUED: December 21, 2000

ORDER DENYING MOTION TO STRIKE AND REQUEST FOR
ORAL ARGUMENT AND GRANTING MOTION FOR EXTENSION OF TIME TO FILE
REBUTTAL TESTIMONY ON WASTEWATER SERVICE

On November 3, 1999, Florida Water Services Corporation (FWSC or utility) filed an application for amendment of Certificate No. 106-W to add territory in Lake County. The City of Groveland (City) timely filed a protest to the application on November 24, 1999. By Order No. PSC-00-0623-PCO-WU (Order Establishing Procedure), issued April 3, 2000, this matter had been set for an administrative hearing on December 11 and 12, 2000. By Order No. PSC-00-1405-PCO-WU, issued August 1, 2000, the filing dates for rebuttal testimony and prehearing statements were revised. On October 27, 2000, the parties filed a Joint Motion for Extension of Time to File Rebuttal Testimony and Joint Motion for Continuance of the final hearing dates. By Order No. PSC-00-2096-PCO-WU, issued November 6, 2000, the hearing dates were changed to March 13 and 14, 2001, and the rebuttal testimony filing date was changed to November 30, 2000.

On November 28, 2000, FWSC filed a Motion to Strike and Motion For Extension of Time to File Rebuttal Testimony on Wastewater Service. In its motion, FWSC argues that it is only seeking an extension of its existing service territory to provide water service to Summit, a planned unit development. FWSC states that the Summit development intends to provide sewer service by septic tanks. FWSC argues that since this case involves only an application for water service, the provision of wastewater service is totally irrelevant unless and until there is some prohibition that keeps Summit from using septic tanks. FWSC further argues that it is a waste of time and money to address the provision of wastewater service to a development planned for septic tank use. FWSC asserts that the City must take the case as it finds it. FWSC requests that the references to wastewater service in the testimony

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of Mr. Yarbough and Mr. Mittauer be stricken and that an order be entered to clarify that the provision of wastewater service is not an issue in this matter.

On December 5, 2000, the City timely filed its Response in Opposition to FWSC's Motion to Strike and Motion for Extension of Time to File Rebuttal Testimony. The City asserts that Section 367.045, Florida Statutes, sets forth the criteria by which the Commission will evaluate an application. The City contends that whether or not Summit can be provided sewer service is a valid issue in this proceeding for several reasons. First, the City contends that it is in the public interest to have one provider of water and wastewater service. Second, it is in the public interest to have centralized sewer service. Third, the Commission has broad discretion to consider anything within its jurisdiction regarding regulatory issues litigated before it. Therefore, the City argues that the Motion to Strike should be denied.

Section 367.045, Florida Statutes, sets forth the criteria by which the Commission evaluates an application for extension of territory. Pursuant to Section 367.045, Florida Statutes, this Commission can grant or deny an amendment of a certificate if it is in the public interest. Section 367.045, Florida Statutes, does not make a distinction as to whether the amendment is requested for water service only, wastewater service only, or both water and wastewater service. Moreover, in Order No. PSC-97-1173-FOF-WS, issued October 1, 1997, in Docket No. 960576-WS, wherein the Commission granted in part and denied in part Mad Hatter Utility, Inc.'s request to amend its certificates, the Commission found that "the public interest consideration of consistency of service providers is a final determinate." Id. at 47. Therefore, I find it appropriate to deny FWSC's Motion to Strike the testimony of Mr. Yarbough and Mr. Mittauer relating to wastewater issues. Further, I find that the issue of wastewater service is an issue in this proceeding.

FWSC requested that it be granted an extension of time to file its rebuttal testimony on the issue of wastewater service if its Motion to Strike is denied. FWSC requested that it be given ten days after the issuance of an order denying its Motion to Strike. At the time FWSC filed its motion, FWSC represented that the City had no objection to the request for extension of time if the City

was given an opportunity to respond to supplemental rebuttal testimony. However, in its Response, the City opposes the granting of the additional time, stating that FWSC had two months in which to file a Motion to Strike. The City states that there is no good reason why FWSC could not have addressed its ability to provide wastewater service in its rebuttal testimony filed November 30, 2000, and that it could have filed its Motion to Strike simultaneously. Since it will not necessitate a change in the prehearing or hearing dates, I find that it is appropriate to grant FWSC's request for Extension of Time to File Rebuttal Testimony. Thus, FWSC shall file rebuttal testimony within ten days of the issuance date of this Order on the issue of wastewater service. FWSC's rebuttal testimony shall only address the issue of wastewater service to the extent that it has been raised in the direct testimony.

On December 5, 2000, the City filed a Request for Oral Argument on its Response in Opposition to FWSC's Motion to Strike and FWSC's Motion for Extension of Time to File Rebuttal Testimony. I find it appropriate to deny the City's Request for Oral Argument, as it is essentially a request for the opportunity to present arguments regarding the Commission's authority in certificate cases. Since the issue of wastewater service will remain as an issue in this proceeding, I find that it is unnecessary to hear oral argument at this time.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that Florida Water Services Corporation's Motion to Strike is hereby denied. It is further

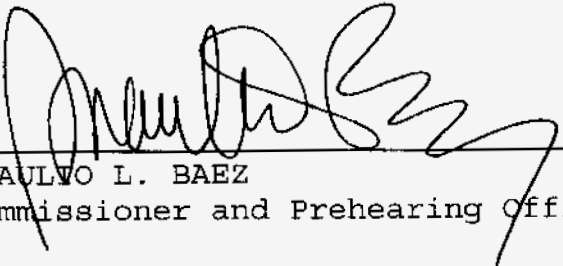
ORDERED that Florida Water Services Corporation's Motion for Extension of Time to File Rebuttal Testimony on Wastewater Service is hereby granted. Florida Water Services Corporation shall file

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rebuttal testimony within ten days of the issuance date of this Order, only addressing the issue of wastewater service to the extent that it has been raised in the direct testimony. It is further

ORDERED that the City of Groveland's Request for Oral Argument is denied.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 20th day of December, 2000.



BRAULVO L. BAEZ
Commissioner and Prehearing Officer

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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.

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.

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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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, 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.