

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Objection to notice of intent)	DOCKET NO. 890416-WS
by SOUTH BROWARD UTILITY, INC. for)	ORDER NO. 22120
amendment of Certificates 359-W and)	ISSUED: 10-31-89
290-S in Broward County)	
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

Pursuant to notice, an administrative hearing was held before William J. Kendrick, Hearing Officer with the Division of Administrative Hearings, on July 19, 1989, in Ft. Lauderdale, Florida, in the above-captioned matter.

APPEARANCES:

For Petitioner,
 City of Pembroke
 Pines:

Mitchell S. Kraft, Esquire
 Josias & Goren, P.A.
 3099 East Commercial Boulevard
 Suite 200
 Fort Lauderdale, Florida 32308

For Petitioner,
 Green Meadows
 Civic Association:

Deborah Simone, President
 Green Meadows Civic Association
 5831 S.W. 162nd Avenue
 Fort Lauderdale, Florida 33331

For Respondent,
 South Broward
 Utility, Inc.:

James L. Ade, Esquire
 Martin, Ade, Birchfield
 & Mickler, P.A.
 3000 Independent Square
 Post Office Box 59
 Jacksonville, Florida 32201

For Intervenor,
 Florida Public
 Service
 Commission

Randy Frier, Esquire
 Florida Public Service Commission
 Fletcher Building
 101 East Gaines Street
 Tallahassee, Florida 32399-0863

DOCUMENT NUMBER-DATE

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The Hearing Officer's Recommended Order was entered on August 21, 1989. No exceptions thereto were filed. After consideration of the evidence, we now enter our order.

FINAL ORDER DENYING OBJECTIONS

BY THE COMMISSION:

BACKGROUND

The City of Pembroke Pines and the Green Meadows Civic Association timely protested South Broward Utility, Inc.'s notice of intent to amend its certificates pursuant to Section 367.061, Florida Statutes. The Commission referred the matter to the Division of Administrative Hearings for a formal hearing to be conducted pursuant to Section 120.57(1), Florida Statutes. As indicated earlier, the case was heard on July 19, 1989 and the Hearing Officer's Recommended Order was entered on August 21, 1989. No exceptions were filed with the Commission regarding the findings of fact contained in the Recommended Order. The full text of the Recommended Order is set forth below.

PRELIMINARY STATEMENT

South Broward Utility, Inc. (South Broward), proposes to file an application with the Florida Public Service Commission (PSC) pursuant to Section 367.061, Florida Statutes, to amend its certificates of public convenience and necessity to allow it to provide water and sewer service to the east half of Section 5, Township 51 South, Range 40 East, Broward County, Florida. The City of Pembroke Pines and the Green Meadows Civic Association objected to South Broward's proposal, and the PSC referred the matter to the Division of Administrative Hearings with the request that a hearing officer be appointed to conduct a formal hearing pursuant to Section 120.57(1), Florida Statutes.

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At hearing, South Broward called the following witnesses: Robert Mearns, Robert McTigue, and Ronald E. Corbitt. South Broward's exhibits 1-6 were received into evidence. Pembroke Pines called Ray M. Shimokubo as a witness, but offered no exhibits. Green Meadows called Deborah Simone and Joy Allbritton as witnesses, and its exhibit 1 was received into evidence. The PSC called no witnesses and offered no exhibits.

The transcript of hearing was filed August 1, 1989, and the parties were granted leave until August 10, 1989, to file proposed findings of fact. South Broward and the PSC submitted proposed findings, and they have been addressed in the appendix to this recommended order.

FINDINGS OF FACT

1. South Broward Utility, Inc. (South Broward), is a corporation engaged in the business of providing water and wastewater service to the public in Broward County, Florida. That business is subject to regulation by the Florida Public Service Commission (PSC).

2. South Broward's water and wastewater treatment facilities are located in the Town of Davie, and it currently provides water and sewer services to residents of that municipality. Included within the are of the Town of Davie currently served by South Broward are the lands bordered on the north by Stirling Road, the south by Sheridan Street, and the west by Dykes Road (S.W. 160th Avenue).

3. On February 4, 11, and 18, 1989, South Broward published a notice of extension in the Florida Lauderdale News/Sun-Sentinel, a daily newspaper of general circulation published in Broward County, Florida, in accordance with Rule 25-30.030(2), Florida Administrative Code. The notice provided that South Broward would file an application with the PSC pursuant to Section 367.061,

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Florida Statutes, to amend its certificates of public convenience and necessity to allow South Broward to provide water and sewer service to the east half of Section 5, Township 51 South, Range 40 East, Broward County, Florida. Such area may commonly be described as those lands lying immediately west of Dykes Road to S.W. 166th Avenue, and from Stirling Road on the north to Sheridan Street on the south.

4. On February 24, 1989, South Broward mailed a copy of the aforementioned notice to all local, county and state governmental agencies and all other persons required by Section 367.041(4), Florida Statutes, and Rule 25-30.030(2), Florida Administrative Code.

5. Objections to the notice were filed with the PSC by the City of Pembroke Pines (Pembroke Pines) and the Green Meadows Civic Association (Green Meadows).

6. In its objection, Pembroke Pines contended that it had invested over 30 million dollars to expand its municipal water and sewer service west to the Conversation Area from Sheridan Street on the north to Pembroke Road on the south, that this expansion project was anticipated to provide water and sewer service for its existing municipal boundaries as well as the area proposed to be served by South Broward, that it was preparing an annexation report for the proposed area, and that if South Broward's application were approved it would be precluded from servicing its own residents should annexation occur.

7. At hearing, the proof demonstrated that Pembroke Pines had expanded its municipal water and sewer service such that its water and wastewater treatment plants and related facilities have adequate present capacity to meet the current and anticipated future water and wastewater needs in the disputed service area. The Pembroke Pines water lines are currently located on the south side of Sheridan Street, which street forms the southerly boundary of

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the disputed service area. Its wastewater treatment lines are, however, located approximately one and one-half miles south of Sheridan Street and would require several months and considerable expense to extend them to the disputed service area. Notably, however, no proof was offered that Pembroke Pines had any current intention to annex the disputed service area, or that it had otherwise evidenced any intent to, or taken any action to, provide service to the area.

8. Green Meadows is an association of residents of this area of unincorporated Broward County, some of whom reside within the service area in dispute. The gravamen of Green Meadows' objection is its concern that sewer lines for a centralized sewer system would leak into its member's ground water supply, and that the increase in population density caused by a centralized water and sewer system would adversely affect the area's ecosystem. Neither Green Meadows nor Pembroke Pines contended, however, that the subject extension of service would violate any land use plan, zoning ordinance or other state or local law, and no credible proof was offered that, if built consistent with existent law, the sewer lines would adversely impact the ground water supply or ecosystem.

9. Until recently, all of the lands lying in the disputed service area were located in unincorporated Broward County. However, in September 1988 a parcel of approximately 15 acres which abutted Dykes Road was annexed into the Town of Davie, and in May 1989 a parcel of approximately 80 acres, which abutted the previously annexed parcel on the east, Stirling Road on the north, and S.W. 166th Avenue on the west, was annexed into the Town of Davie. These lands comprise approximately 30 percent of the lands within the disputed service area, and it is the desire of the Town of Davie that water and sewer service to such lands be provided by South Broward. To date, South Broward has entered into a developer's agreement with the owner of the 80-acre parcel to provide such services, and is in the process of executing such an agreement with the owner of the

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15-acre parcel. Pembroke Pines does not object to South Broward's expansion into these areas. As to the remaining acreage within the proposed service area, the owners of the vast majority of those lands have expressed a preference for South Broward to provide water and sewer service to their properties, and South Broward has expressed its desire and ability to provide such services.

10. South Broward's water plant has an existing capacity of 500,000 gallons per day (GPD), and has sufficient capacity to address the current need for water service in the proposed area. Upon completion of its current expansion, which is anticipated in October 1989, South Broward's water plant will have a capacity of 1,250,000 GPD, and adequate capacity to address any future demand for water service in the proposed area.

11. South Broward's wastewater treatment plant, with a capacity of 500,000 GPD, currently has sufficient capacity to satisfy the present and future demand for such services in the proposed area. An expansion of that plant is expected to be in service by 1991, which will double the plant's capacity and provide additional capacity.

12. Currently, South Broward has water and sewer lines adequate to serve the proposed area in place, and located under Dykes Road at the eastern edge of the service area. Such lines are adequate to meet all present and anticipated future needs for such service in the area, and the water lines are adequate to provide fire protection to the area.

13. South Broward has the present financial, managerial, operation, and technical ability to provide the present and anticipated needs for water and wastewater service in the proposed area, and the public interest will be best served by the extension of South Broward's water and wastewater systems to that area. Such expansion will not be in competition with or a duplication of any other system in the area.

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CONCLUSION OF LAW

1. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

2. Pursuant to Section 367.061(3), Florida Statutes, a utility proposing to extend its service area must complete all noticing requirements in the manner prescribed by Section 367.041(4), Florida Statutes, at least 30 days before commencing construction of the proposed extension. Where, as here, an objection is filed with the PSC within such period, a hearing must be conducted pursuant to Section 120.57, Florida Statutes, to determine whether such objection should be sustained. Sections 367.051(2) and 367.061(3)(b), Florida Statutes. If not sustained, the utility has one year from the date of its prior publication of notice in which to construct, serve and make application for amendment of its service area.

3. As heretofore found, South Broward complied with all noticing requirements in the manner prescribed by law, and timely objections were filed on behalf of Pembroke Pines and Green Meadows. Pursuant to law, a formal hearing was held under the provisions of Section 120.57(1), Florida Statutes, to determine whether such objections should be sustained.

4. Here, the proof demonstrated that the proposed service area is a reasonable and logical extension of South Broward's current service area, and that it possessed the requisite financial, technical, and physical capabilities to extend water and sewer services to the disputed area without diminishing the quality of such services to its present customers. Under the circumstances presented, South Broward's proposal is in the public interest, and the objections filed by Pembroke Pines and Green Meadows are ill-founded.

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RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that the objections filed by Pembroke Pines and Green Meadows be denied.

Upon consideration, we find the Hearing Officer's findings to be supported by competent substantial evidence in the record and, therefore, adopt his Recommended Order. Pursuant to Section 367.061(4), Florida Statutes, South Broward has one year from the notice to apply to amend the certificates after providing service in the noticed territory. The one year period began to run on February 18, 1989, the last date notice was given. Because of the time involved in considering and disposing of the objections filed to the notice, we find there is good cause to allow South Broward one year from the date of the Commission's Order in which to provide service in the noticed territory and file its application.

Since this docket was opened to resolve the objections to the notice of intent and those objections have been disposed of herein, there is no further action to be taken in this docket. Accordingly, this docket may be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the objections of the City of Pembroke Pines and the Green Meadows Civic Association to the notice of intent of South Broward Utility, Inc. to amend its certificates in Broward County are hereby denied. It is further

ORDERED that each and every finding herein is hereby specifically approved. It is further

ORDERED that South Broward Utility, Inc. may extend its lines and provide service in the territory noticed. It is further

ORDERED that South Broward Utility, Inc. may file its application to amend its certificates within one year of the date of this Order. It is further

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ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission
this 31st day of OCTOBER, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

NSD

by: *Kay Flynn*
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR 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: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting 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 or sewer 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.