

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for) DOCKET NO. 920174-WU
amendment of Certificate No.) ORDER NO. PSC-92-1034-FOF-WU
496-W in Lake County by LAKE) ISSUED: 09/23/92
UTILITIES SERVICES, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
LUIS J. LAUREDO

ORDER DENYING MOTION TO DISMISS

BY THE COMMISSION:

On February 24, 1992, Lake Utilities Services, Inc. (LUSI) filed an application for Amendment of Water Certificate No. 496-W in Lake County, Florida. In the application LUSI requests additional territory. Presently, LUSI has eight certificated areas south of the City of Clermont.

On March 4, 1992, the City of Clermont (the City) filed with this Commission a timely objection to LUSI's requested amendment. The City's objection is based on its comprehensive plan which provides specific direction for city and county coordination in providing potable water, sanitary sewer and other necessary infrastructure items to satisfy the impacts of future growth. In addition the City objected based on City Ordinance No. 273-C, which establishes a water and wastewater utility district outside the City's boundaries pursuant to Chapter 180, Florida Statutes.

On August 7, 1992, LUSI filed a Motion to Dismiss the City's objection. LUSI contends that the City has not made a prima facie showing to support its objection and that there is no direct testimony indicating that the amendment of LUSI's certificate would be inconsistent with the City's comprehensive plan. In addition, LUSI contends that the City did not comply with Chapter 180, Florida Statutes, when creating a municipal water and sewer district outside the City's boundaries.

Section 367.045(5)(b), Florida Statutes, provides, when . . . amending a certificate of authorization, the commission need not consider whether the . . . amendment of the certificate of authorization is inconsistent with the local comprehensive plan of a . . . municipality unless a timely objection . . . has been made. If such an objection has been timely made, the commission shall consider, but is not bound by, the local comprehensive plan of the . . . municipality. (emphasis supplied)

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Based on the foregoing, we find that the City has made a timely objection to the application of LUSI based on its view that LUSI's application will violate its comprehensive plan and there clearly are disputed issues of fact as to whether LUSI's application will violate the City's comprehensive plan. Therefore, we find it appropriate to deny LUSI's Motion to Dismiss the City's objection.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission, that Lake Utilities Services, Inc.'s Motion to Dismiss the objection filed by the City of Clermont is hereby denied.

By ORDER of the Florida Public Service Commission this 23rd day of September, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), 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

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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.