

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Objection to notice by ORTEGA	)	DOCKET NO. 891243-WS
UTILITY COMPANY of intent to amend	)	
Certificates Nos. 167-S and 223-W in	)	ORDER NO. 22840
Duval County	)	
<hr/>		ISSUED: 4-19-90

The following Commissioners participated in the disposition of this mater:

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

ORDER CLOSING DOCKET

During the 1989 session, among other changes to Chapter 367, Florida Statutes, the Legislature repealed Sections 367.041, 367.051, and 367.061, Florida Statutes, and adopted, in their stead, Section 367.045, Florida Statutes. These changes became effective on October 1, 1989.

On October 9, 1989, Ortega Utility Company (Ortega) served notice of its intent to expand its service territory pursuant to Section 367.061, Florida Statutes. By letter dated October 20, 1989, the City of Jacksonville (Jacksonville) objected to Ortega's notice. On November 7, 1989, Atlantic Utilities of Jacksonville, Inc. (Atlantic) also objected to Ortega's notice.

By letter dated November 7, 1989, the Staff of this Commission (Staff) informed Ortega of the changes to Chapter 367, Florida Statutes, and sent Ortega a copy of these changes. In addition, Staff instructed Ortega that it would have to file an application for the amendment and serve notice of its actual application.

On November 21, 1989, Ortega served an amended notice of its intent to amend Certificates Nos. 223-W and 167-S pursuant to Section 367.045, Florida Statutes; however, Ortega did not file its application as required by that section. On December 11, 1989, Jacksonville objected to Ortega's revised notice. On December 12, 1989, Atlantic objected to Ortega's revised notice.

During January of 1990, Staff contacted Ortega by telephone to discuss its failure to file an application with its notice. Ortega indicated that it intended to file an application on or about February 1, 1990. No such application was filed.

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Toward the end of February, Staff contacted counsel for Ortega by telephone to inquire whether Ortega did, in fact, intend to file an application. Counsel for Ortega assured Staff that he would find out and report back. No such information was provided.

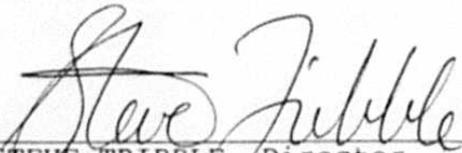
By letter dated March 2, 1990, Staff again requested Ortega to state whether it intended to go forward with its application. The letter has, thus far, gone unanswered. In addition, on or about March 12, 1990, Staff again attempted to contact counsel for Ortega by telephone. Staff's call was not returned.

Under Section 367.045, Florida Statutes, a utility may no longer serve a notice of intent to apply for a certificate or an amendment thereto. Rather, a utility is required to file a notice of its actual application. Since Ortega filed a notice of intent to apply for an amendment rather than an application and a notice of its application, its notice and the objections thereon are moot. If Ortega wishes to pursue this matter, it will need to provide notice of its application at the time it files its application. Since Ortega has not indicated whether it intends to go forward with its application, despite repeated requests by Staff, we find that this docket should be closed.

Based upon the discussion above, it is

ORDERED by the Florida Public Service Commission that Docket No. 891243-WS be and is hereby closed.

By ORDER of the Florida Public Service Commission this 19th day of APRIL, 1990.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

RJP

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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.