

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: MARCH 21, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (BRUBAKER)
DIVISION OF CONSUMER AFFAIRS (LOWERY)
DIVISION OF ECONOMIC REGULATION (REDEMANN)

Handwritten initials and signatures: BRUBAKER, LOWERY, REDEMANN, JDJ, RRR

RE: DOCKET NO. 020009-WU - COMPLAINT BY MS. GEORGINA GIALLANZA AGAINST FLORIDA WATER SERVICES CORPORATION REGARDING NON-PROVISION OF SERVICE AND PLACEMENT OF UTILITY FACILITIES IN LAKE COUNTY.

AGENDA: 04/02/2002 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\020009.RCM

CASE BACKGROUND

Florida Water Services Corporation (FWSC or utility) is a Class A utility which provides water and wastewater service throughout Florida. By Order No. 20869-WS, issued March 9, 1989, in Docket No. 880605-WS, the Commission approved the transfer to FWSC of Certificates 307-W and 256-S from West Volusia Utilities, Inc. (West Volusia) in Lake and Volusia County. At issue in this docket is the system which serves the Holiday Haven development in Lake County.

On February 20, 2001, Ms. Georgina Giallanza filed Complaint No. 363306W with the Commission's Division of Consumer Affairs (CAF) against FWSC, alleging that the utility's pipes transversed her property without having first obtained an easement. Ms.

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Giallanza stated that she had tried to contact the utility on several occasions and was unable to get a response.

On February 21, 2001, CAF received a call from FWSC clarifying that Ms. Giallanza is a customer of Astor-Astor Park Water Association (Astor). Astor is a non-profit association whose exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes, was recognized by Order No. PSC-92-0978-FOF-WS, issued September 10, 1992, in Docket No. 920750-WS. Astor's service area abuts that of FWSC. CAF requested that FWSC forward information relevant to Ms. Giallanza's complaint to the Commission. On March 16, 2001, CAF received a final report with supporting documentation via e-mail from FWSC.

History

In preparation of purchasing the property in question, Ms. Giallanza initially contacted Astor with a request to provide service. Astor indicated that it would be another year before service would be available to the property. Ms. Giallanza required service within the month, and apparently contacted Commission staff regarding the matter. Staff contacted FWSC asking whether the utility would consider expanding its territory to serve Ms. Giallanza. By letter dated October 2, 2000, FWSC had informed the then-owner, Ms. Bonita Brock, that because the subject property was outside its service territory, a release from Astor would be required and an amendment application would have to be filed with and approved by the Commission. FWSC requested that a letter be obtained from Astor stating that it would not object to a territory amendment. FWSC indicated to staff that Astor refused, and that FWSC thereafter informed Ms. Giallanza that the utility could proceed no further without Astor's release.

On October 10, 2000, Ms. Giallanza signed a contract for purchase of the subject property. By letter dated October 13, 2000, Astor agreed to provide water service to the property within 90 days. Astor called FWSC to mark the placement of its lines. On February 12, 2001, Ms. Giallanza contacted FWSC asking why the flags marking FWSC's lines indicated that the utility's water lines transversed her property. Representatives for FWSC indicated that the pipes were located on roads which were private right-of-ways known as Trespass Trail and Spillers Road, and that they would refer the matter to their legal department. After an investigation

by its operations and legal department, FWSC concluded that it had a legal right to site its facilities on the road.

At legal staff's request, Ms. Giallanza provided additional information by letter dated April 10, 2001, which detailed the legal description of the property purchased, a title search Ms. Giallanza had performed with respect to any easements encumbering the property, and maps describing the location of her property and FWSC's service territory.

Legal staff then contacted representatives of the utility and discussed the matters raised by Ms. Giallanza. By letter dated April 27, 2001, FWSC provided copies of plats, legal descriptions, and corporate warranty deeds and agreements which it believes demonstrates the utility's right to locate a portion of its lines on Spiller's Drive and Trespass Trail in the Holiday Haven area. FWSC contends that this documentation demonstrates that broad easement rights were conveyed to the predecessor utility by the developer to render service, and that the property owned by Ms. Giallanza is thus subject to the continuing rights granted to the predecessor utility for construction, ownership, maintenance, and installation of the utility facilities.

Upon review of this additional information, Ms. Giallanza remained concerned that the utility's lines created a trespass to her property. In an effort to resolve the matter informally, on July 18, 2001, a noticed meeting was held in Tallahassee, attended by Ms. Giallanza, the Office of Public Counsel (OPC), FWSC, and Commission staff. When no resolution was reached between the parties, staff offered its informal opinion that, given the information that had been provided, it did not appear that the Commission had the jurisdiction to address Ms. Giallanza's concerns. After further discussion, staff offered, and Ms. Giallanza requested, that the matter be brought before the Commission for formal determination. To that end, staff requested that Ms. Giallanza provide a specific list of issues and a description of the action she would like the Commission to take with respect to her concerns.

By letter dated September 25, 2001, Ms. Giallanza filed a letter stating that FWSC refused to provide service to her property because she was outside the utility's territory. However, based on the maps and property descriptions provided, her property is in fact in FWSC's territory, and FWSC has improperly used her land for

pipes to sell water to other customers. FWSC has water lines on her property which could have been used to provide service in a more timely and cost-effective manner than that which actually occurred, and FWSC unfairly refused to provide service to Ms. Giallanza's property. She therefore requests that FWSC disconnect the pipes that are on her property at the property line and connect them instead to the lines that are on the utility's own property or where the utility has properly obtained an easement. Ms. Giallanza states that she is now receiving water from Astor, and wishes for FWSC to cease using her land to sell its water.

By letter dated October 31, 2001, FWSC responded to the two core issues raised in Ms. Giallanza's complaint: (1) why does FWSC have facilities on her property without appropriate right, and (2) why was water service not provided to Ms. Giallanza upon her request. FWSC contends that the issue of whether the utility has appropriate legal authority to site its facilities on Ms. Giallanza's property is not a matter within the Commission's jurisdiction. With respect to the second issue, FWSC states that its maps show that Ms. Giallanza's home site is outside of its certificated service territory, and that the adjacent utility company, Astor, would not consent to FWSC providing Ms. Giallanza service.

This recommendation addresses Ms. Giallanza's complaint with respect to FWSC's refusal to provide service and the presence of the utility's water lines on Ms. Giallanza's property. The Commission has jurisdiction pursuant to Sections 367.011 and 367.111, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Does the complaint filed by Ms. Georgina Giallanza against Florida Water Services Corporation state a basis upon which relief may be granted by the Florida Public Service Commission?

STAFF ANALYSIS: No. The complaint does not state a basis upon which relief may be granted. Staff therefore recommends that the complaint should be dismissed on the Commission's own motion. (BRUBAKER, REDEMANN, LOWERY)

RECOMMENDATION:

Failure to Provide Service upon Request

By Order No. 20869, issued March 9, 1989, in Docket No. 880605-WS, the Commission approved the transfer of the Holiday Haven service area in Lake County from West Volusia Utilities, Inc. to FWSC. The utility purchases its water for the Holiday Haven customers in bulk from the Astor-Astor Park Water Association (AAPWA), a non-profit corporation that provides utility services to its members in an adjacent area of Lake County. FWSC states that its maps show that Ms. Giallanza's home site is outside of its certificated service territory, and that the AAPWA would not consent to FWSC providing Ms. Giallanza service.

As discussed in the case background, when Ms. Giallanza requested service from FWSC in her preparations to purchase property in Holiday Haven, FWSC responded that a release from Astor would be required and an amendment application would have to be filed with and approved by the Commission. FWSC indicated to staff that Astor refused, and that FWSC thereafter informed Ms. Giallanza that the utility could proceed no further without Astor's release. Ms. Giallanza contends that FWSC's water lines on her property could have been used to provide service in a more timely and cost-effective manner than that which actually occurred, and that FWSC unfairly refused to provide service to her property.

A review of the maps and other information provided by Ms. Giallanza and FWSC indicates that the southern-most tip of Ms. Giallanza's property is indeed within FWSC's service area. However, the great majority of the property, including the site to which water would be provided, is located outside FWSC's service area.

Section 367.045, Florida Statutes, provides that a utility subject to the Commission's jurisdiction may not delete or extend its service area outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the Commission. Ms. Giallanza has correctly pointed out that past Commission dockets have recognized instances where FWSC has served outside its authorized territory. For example, by Order No. PSC-93-1150-FOF-WS, issued August 9, 1993, in Docket No. 930129-WU, FWSC's certificate was amended to include additional territory that it was already serving in the Holiday Haven, Lake County area.¹

However, staff believes that it would contravene the Commission's statutory authority if it were to recommend that FWSC serve outside its certificated area without having first obtained approval pursuant to Section 367.045, Florida Statutes. Indeed, that would be a matter that would subject FWSC to the Commission's show cause authority pursuant to Section 367.161, Florida Statutes. The information provided to staff indicates that Astor was unwilling to provide a release that it would not object to a territory amendment by FWSC, and that FWSC informed Ms. Giallanza that the utility could proceed no further without Astor's release.

Ms. Giallanza is currently receiving water service from Astor, and has expressed no dissatisfaction with that service. She has expressed no desire to be served by FWSC in the future, and as discussed previously, she is in fact requesting that FWSC remove its existing facilities from her property. In light of these circumstances, it does not appear that Ms. Giallanza's complaint states a basis regarding this issue upon which relief may be granted. Staff therefore recommends that the portion of Ms. Giallanza's complaint dealing with FWSC's refusal to provide service should be dismissed on the Commission's own motion.

¹Order No. PSC-93-0202-FOF-WS, issued February 9, 1993, in Docket No. 921014-WS, approved FWSC's schedule for submitting amendment applications for 49 systems in 13 counties in which the utility was serving outside its territory. Pursuant to that Order, no separate show cause issue was identified in Docket No. 930129-WU.

Unauthorized Presence of Water Lines

The other aspect of Ms. Giallanza's complaint deals with the presence of FWSC's water lines on her property. As discussed previously, Ms. Giallanza became aware of the presence of FWSC's water lines when they were marked in preparation for Astor serving the property. When Ms. Giallanza contacted FWSC asking why the flags marking FWSC's lines indicated that the utility's water lines were on her property, representatives for FWSC indicated that the pipes were located on roads that were private right-of-ways known as Trespass Trail and Spillers Road. Both Ms. Giallanza and FWSC's legal department conducted separate research with respect to the matter. Ms. Giallanza concluded that no legal right of way had been granted for the presence of FWSC's lines, and provided staff documentation of a record search she had performed on the matter. FWSC provided staff with copies of plats, legal descriptions, and corporate warranty deeds and agreements which it believes demonstrates the utility's right to locate a portion of its lines on Spiller's Drive and Trespass Trail in the Holiday Haven area.

FWSC's water distribution map shows the utility's existing Holiday Haven water distribution system. According to the map, a 4-inch PVC water line approximately 650 feet in length runs along the south side of Ms. Giallanza's property, and a 2-inch PVC water line approximately 250 feet in length runs along the west side of Ms. Giallanza's property. The map does not actually show the water lines inside Ms. Giallanza's property, but according to both Ms. Giallanza and the utility, the water lines are sited on Ms. Giallanza's property along the roadways Trespass Trail and Spillers Road. The water lines do appear to be placed within FWSC's existing certificated area.

It appears to staff that there are issues of easement and property law in this case that are beyond the jurisdiction of this commission. Ms. Giallanza argues that since there is no valid easement, FWSC is trespassing on her property and should remove the facilities without charge. FWSC contends that the information it has provided to staff demonstrates that its facilities are legally located on a public right of way.

These arguments present issues of easement and property law, for which the Commission's authorizing statutes provide no adequate remedy at law. Staff believes that such issues should be addressed by a court of competent jurisdiction, should the parties wish to

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pursue the matter. Staff therefore recommends that the portion of Ms. Giallanza's complaint concerning the presence of FWSC's facilities on her property should be dismissed on the Commission's own motion.

Staff's recommendation in this matter is consistent with prior Commission decisions (see Order No. PSC-93-1375-FOF-EI, issued September 20, 1993, in Docket No. 930789-EI and Order No. PSC-93-1382-FOF-EI, issued September 21, 1993, in Docket No. 930807-EI).

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ISSUE 2: Should this docket be closed?

STAFF RECOMMENDATION: Yes. If no protest occurs within 21 days of the issuance date of the Order, the PAA Order will become final upon the issuance of a Consummating Order and the docket should be closed. (BRUBAKER, REDEMANN, LOWERY)

STAFF ANALYSIS: If no protest occurs within 21 days of the issuance date of the Order, the PAA Order will become final upon the issuance of a Consummating Order and the docket should be closed.