

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of General Development) DOCKET NO. 891190-WS
Utilities, Inc., for Declaratory)
Statement Concerning Regulatory) ORDER NO. 22459
Jurisdiction over its Water and Sewer)
System in DeSoto, Charlotte, and) ISSUED: 1-24-90
Sarasota Counties.)

The following Commissioners participated in the disposition of this matter:

MICHAEL WILSON, CHAIRMAN
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER

ORDER GRANTING PETITION FOR DECLARATORY STATEMENT
AND DENYING MOTION TO DISMISS

Background

During its 1989 regular session, the Legislature amended section 367.171, Florida Statutes, by adding subsection (7). That subsection states that utility systems which provide service across county boundaries shall be within the exclusive jurisdiction of the Florida Public Service Commission. However, there is an exemption in the statute for utilities which are subject to, and remain subject to, an inter-local utility agreement in effect as of October 1, 1989.

On October 13, 1989, General Development Utilities, Inc. (GDU) filed a petition for declaratory statement asking the Commission to determine if GDU's water and wastewater system serving communities in DeSoto, Charlotte, and Sarasota Counties is now jurisdictional or is not jurisdictional because of an agreement between the City of North Port and DeSoto and Charlotte Counties. Service in Sarasota County is limited to customers in the City of North Port.

On November 20, 1989, the City of North Port filed a motion to intervene which was granted by Order No. 22258. On or about November 30, 1989, the City of North Port filed a motion to dismiss to which GDU filed a response on October 11, 1989. On or about December 14, 1989, Charlotte County also intervened.

Ordinarily, there is no oral argument in petitions for declaratory statement. However, because of the complexity of this case and because there were alternative recommendations by staff, the Commission allowed the respective attorneys for GDU, City of North Port, and Charlotte County, to address the issues involved in the petition at the agenda conference on January 2, 1990.

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Motion to Dismiss

The Commission's authority to answer the petitioner's question in a declaratory statement is set forth in section 120.565, Florida Statutes and Rule 25-22.021, Florida Administrative Code. Assuming the allegations of the motion were true, that is, the Commission lacks jurisdiction over the City of North Port, we shall deny the motion because we believe an agency's lack of jurisdiction over an intervenor does not preclude the agency from determining whether it has jurisdiction over the petitioner. In its motion, the City of North Port failed to cite any statute, rule, or case law to support its theory that, in a petition for declaratory statement, the Commission's lack of jurisdiction over an intervenor prevents it from exercising its authority to answer the petitioner's question.

Jurisdiction

Following Sunset review of the Public Service Commission's jurisdiction over the water and sewer industry, the Florida Legislature enacted Chapter 89-353, Laws of Florida, which significantly amended many of the sections in Chapter 367, Florida Statutes, from which the Commission derives its authority over water and wastewater utilities. In its petition, GDU asks the Commission to determine whether GDU's water and wastewater system in the counties of Charlotte, DeSoto, and Sarasota (City of North Port) is within the exclusive jurisdiction of the Commission pursuant to section 367.171(7), Florida Statutes.

Section 367.171(7), states:

(7) Notwithstanding anything in this section to the contrary, the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional, except for utility systems that are subject to, and remain subject to, inter-local utility agreements in effect as of the effective date of this law.

Thus, under this section, a utility system will be jurisdictional if its service transverses county boundaries unless the utility system is subject to, and remains subject to, an inter-local agreement which was in effect as of October 1, 1989, the effective date of the law.

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According to the facts presented by GDU, its water and wastewater system does transverse the boundaries of three counties: Charlotte, DeSoto, and Sarasota (service in Sarasota is limited to the City of North Port). Service across county boundaries satisfies the first requirement of Section 367.171(7). The next question to ask is whether GDU's utility system is subject to and will remain subject to, an inter-local agreement in effect as of October 1, 1989. GDU acknowledges that, prior to October 1, Charlotte County, City of North Port, and DeSoto County entered into an inter-local agreement, a copy of which GDU attached to its petition for declaratory statement.

The essential elements of the agreement are that the City of North Port will continue to regulate and set the rates of all water and wastewater utility systems within its city limits. Charlotte County will continue to do likewise within its unincorporated areas, and DeSoto County will continue to defer to the Public Service Commission's regulation of utilities within its borders. The inter-local agreement also states that the parties will provide each other with copies of existing and future utility regulations, will attempt to promulgate reasonably uniform regulations regarding utility service, and will exchange information to ensure that authorized utility rates, fees, and charges are just, reasonable, compensatory, and not unfairly discriminatory. The parties also agree to meet, as necessary, to discuss common concerns regarding the provision of water and sewer service within their respective jurisdictions.

It is clear that GDU's tri-county utility system is subject to an agreement. However, the question remains whether this agreement is the kind of agreement the Legislature intended when it created the exemption for utility systems subject to inter-local agreements. In determining legislative intent, we must identify the problem that the enactment of section 367.171(7) was intended to correct, and the solution that the Legislature adopted. State Board of Accountancy v. Webb, 51 So.2d 296 (1951) (in determining legislative intent, court will consider the history of the act, the evil to be corrected, the purpose of the enactment, and the law then in existence bearing on the same subject). We should then liberally construe the statute in a manner that furthers that intent to the maximum extent consistent with the statutory language. Section 367.011(3), Florida Statutes.

We believe we must look at the terms of the agreement to determine how we must exercise the authority given us by the Legislature in subsection 367.171(7), Florida Statutes. We have many concerns with the agreement. First, it was written pursuant

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to the authority contained in section 163.01, Florida Statutes. That section authorizes inter-local agreements to enable local governments to provide services and facilities. This agreement does not do that; instead, it retains the status quo regarding the methods of regulation for GDU's water and wastewater systems. The agreement also appears to contain contradictory language wherein it is asserted that the Commission will continue to regulate water and wastewater systems in DeSoto County, yet also states that the City of North Port and DeSoto and Charlotte Counties will promulgate regulations regarding water and sewer. Further, the agreement provides for termination of the agreement which does not appear to mesh with the statutory language relating to remaining subject to the inter-local agreement. Charlotte County and the City of North Port argued that they wish to maintain the status quo to control growth.

We do not believe that the Legislature intended the exemption for utility systems subject to inter-local agreements to perpetuate a situation where a utility would be subject to several regulators. On the contrary, we believe that the Legislature intended to eliminate the regulatory problems that exist when utility systems provide service across political boundaries and are subject to economic regulation by two or more regulatory agencies (i.e., Counties, Cities, or Commission). This duplicative economic regulation is inefficient and results in potential inconsistency in the treatment of similarly situated customers. Inefficiency stems from the need for multiple rate filings and multiple rate hearings. It also stems from the need to perform jurisdictional cost studies to attempt to allocate the costs of a single system across multiple jurisdictions. These inefficiencies could result in unnecessary and wasteful effort which would translate into higher rate case expense and higher rates to customers. Inconsistency can occur when regulators apply different ratemaking principles to the same system or make inconsistent determinations on the same issue, such as the utility's cost of equity capital.

The Legislature chose to promote efficient, economic regulation of multi-county systems by giving the Commission exclusive jurisdiction over all utilities whose service crosses county boundaries. That jurisdiction is granted whether or not the Commission previously had jurisdiction over any portion of the multi-county system. By concentrating exclusive jurisdiction over these systems in the Commission, the Legislature has corrected the problem of redundant, wasteful, and potentially inconsistent regulation.

Upon consideration, we declare GDU's tri-county water and

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wastewater system to be subject to this Commission's exclusive jurisdiction. In the exercise of our responsibilities in administering Chapter 367, we have reviewed the inter-local agreement and do not find it sufficient to exempt the tri-county system from our jurisdiction.

We are sympathetic to the County's and City's desires to control growth. To do it through the granting or extending of utility service territories is difficult. Other options are available, such as using their zoning or permitting powers to stop or re-channel growth.

In looking at the statutory language, we must conclude that the legislative intent was to give this Commission exclusive jurisdiction over a multi-county system, unless there is an inter-local agreement that gives regulatory authority to some single entity. The inter-local agreement entered into by Charlotte and DeSoto Counties and the City of North Port does not appear to meet that intent.

For the reasons set forth above, it is

ORDERED by the Florida Public Service Commission that the City of North Port's motion to dismiss is hereby denied. It is further

ORDERED that the petitioner's motion for declaratory statement is granted in that the Commission determines that GDU's water and wastewater system, which is serving communities in DeSoto, Charlotte, and Sarasota Counties, is within the Public Service Commission's exclusive jurisdiction by virtue of section 367.171(7), Florida Statutes. It is further

ORDERED that this declaratory statement is based upon the particular set of facts or circumstances presented by the petitioner and any change in those facts or circumstances may significantly alter or even void this declaratory statement.

By ORDER of the Florida Public Service Commission this 24th day of JANUARY, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

WJB/NSD:3586G

by: Kay Lynn
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 (1985), to notify parties of any administrative hearing or judicial review of Commission orders that may be available, as well as the procedures and time limits that apply to such further proceedings. 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.