

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of General Development) DOCKET NO. 891190-WS
Utilities, Inc., for declaratory state-)
ment concerning regulatory jurisdiction) ORDER NO. 22787
over its water and sewer system in)
DeSoto, Charlotte, and Sarasota Counties.) ISSUED: 4-9-90

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING MOTIONS FOR RECONSIDERATION AND STAY

Background

On October 13, 1989, General Development Utilities, Inc. (GDU), filed a petition for declaratory statement as to whether the Commission has exclusive jurisdiction over GDU's West Coast Division as a result of newly enacted subsection (7) of section 367.171, Florida Statutes. That subsection gave the Commission exclusive jurisdiction over all utility systems whose service transverse county boundaries, except for utility systems that were , and continue to be, subject to inter-local utility agreements in effect as of October 1, 1989. GDU's West Coast Division is a water and sewer system serving communities in the City of North Port, Charlotte County, and DeSoto County. As part of its petition, GDU questioned whether an inter-local agreement between the City of North Port, Charlotte County, and Desoto County exempted GDU's system from the Commission's jurisdiction.

On November 17, 1989, the City of North Port intervened and, twelve days later, filed a motion to dismiss GDU's petition. On December 29, 1989, Charlotte County filed a motion to intervene and was allowed to participate in the agenda conference held on January 2, 1990. On January 24, 1990, the Commission issued Order No. 22459 which denied the motion to dismiss and held that GDU's West Coast Division was jurisdictional.

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On February 6, 1990, the City of North Port filed a motion for reconsideration and stay with a memorandum in support thereof. On the following day, Charlotte County filed a motion for reconsideration. On February 19, 1990, GDU filed its response to those motions.

Reconsideration

In their motions for reconsideration and stay, both the City of North Port and Charlotte County raised the same arguments that were presented in the City of North Port's motion to dismiss which have already been considered by the Commission. Once again they argue that the Commission lacks jurisdiction to consider GDU's petition for declaratory statement because of the exemption in section 367.022(2), Florida Statutes, and because of the inter-local agreement between the City of North Port, Charlotte County, and DeSoto County. The Commission has already considered those arguments and rejected them. A motion for reconsideration should not be granted merely because the losing parties disagree with the Commission's decision and wish to reargue the case. Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962).

The only point the City of North Port and Charlotte County raised, which was not discussed at the agenda conference, was the alleged fact that the sewer lines of GDU's West Coast Division do not physically cross county boundaries. It is incorrect to say that the Commission did not consider whether GDU's sewer service transversed county boundaries. In paragraph 8 of its petition for declaratory statement, GDU specifically alleged that its West Coast Division was a single system serving three counties. In fact, at the agenda conference, counsel for the City of North Port indicated that there was one system.

Neither the City of North Port nor Charlotte County cited to any case law or statutory definition of "system" to support the proposition that GDU's wastewater system must physically transverse a county line for it to be within the Commission's jurisdiction. On the contrary, on page 7 of its response to the motions for reconsideration, GDU cited section 367.021(11), Florida Statutes, to support its contention that its West Coast Division is a single water and wastewater system. Section 367.021(11) reads as follows:

(11) "System" means facilities and land used or useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities and land.

The above definition should be read in pari materia with the definition of service area found in section 367.021(10), which reads as follows:

(10) "Service area" means the geographical area described in a certificate of authorization, which may be within or without the boundaries of an incorporated municipality and may include areas in more than one county.

[Emphasis supplied]

Read together, these definitions show that it is not necessary that GDU's lines physically cross a county boundary for GDU's service to transverse the same boundary. Therefore, we specifically find, as a matter of law, that GDU's service can transverse county boundaries, even if its lines do not physically cross the same boundaries.

Since the City of North Port and Charlotte County did not raise any material point that we have not already considered and since they have not shown any error in our decision, their motions for reconsideration shall be denied.

Stay

In determining whether to grant a petition for stay, we consider whether the petitioner is likely to prevail on appeal and whether the petitioner has demonstrated that he is likely to suffer irreparable harm. Rule 25-22.061(2), Florida Administrative Code. In its request for stay "pending the outcome of this matter," the City of North Port did not indicate whether it intended to appeal. Also, the City of North Port only alleged that it was adversely affected by the Commission's order, not that it would suffer irreparable harm. Since there appears to be no compelling reason to grant a stay, we shall deny the request.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the motions for reconsideration filed by the City of North Port and Charlotte County are hereby denied. It is further,

ORDERED that the motion for stay filed by the City of North Port is hereby denied. It is further

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ORDERED that Docket No. 891190-WS shall be closed upon the expiration of the time for filing an appeal.

By ORDER of the Florida Public Service Commission this 9th day of APRIL, 1990.

STEVE TRIBBLE
Director, Division of Records and Reporting

(S E A L)

WJB (4018G)

by: Kay Flynn
Chief, Bureau of Records

NOTICE OF 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 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.