

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for ) DOCKET NO. 920579-WS  
amendment of Certificates Nos. ) ORDER NO. PSC-92-1146-FOF-WS  
378-S and 447-W in Marion ) ISSUED: 10/08/92  
County by DECCA UTILITIES, a )  
Division of Decca )  
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

ORDER GRANTING DECCA UTILITIES' MOTION TO DISMISS

BY THE COMMISSION:

BACKGROUND

Decca Utilities (Decca or utility), a division of Decca, is a Class B utility which provides water and wastewater services to approximately 1,425 customers in Marion County, Florida. According to Decca's 1991 annual report, the utility recorded an annual operating revenue of \$390,120 and \$359,948, for its water and wastewater systems respectively, with a net operating income of \$180,038 for water and \$68,492 for wastewater.

On June 4, 1992, Decca applied to the Public Service Commission (Commission) for an amendment to Certificates Nos. 378-S and 447-W in Marion County, Florida. Decca has made application to extend its service area to include a shopping center which will consist solely of commercial retail establishments. The request for service was made to the utility by Steeplechase Plaza Partners. A copy of the Agreement between the developer and the utility was filed with the application.

On July 7, 1992, three timely objections were filed by: Venture Associates Utilities Corporation (Venture); the Palm Cay Homeowners' Association, Inc. (Palm Cay); and the Venture Associates Corporation (Corporation). Venture Associates Utilities Corporation (Venture) is a certificated utility providing water service to the Palm Cay development, which is adjacent to the proposed territory. Venture did not request to provide service to the proposed territory. However, in order to serve the shopping

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center, the utility must install its lines across Venture's service territory because Venture's service area is located between Decca's service area and the proposed territory. The entities objecting are not customers within the proposed territory. The objections are based on the three objecting organizations' opposition to any "present or future intent of Decca Utilities to attempt to serve Palm Cay or its certificated area with any type of utilities, including sewer service."

Decca addressed the objections in its motion to dismiss, filed July 13, 1992. Decca argues that the objectors are not within the requested territory but are only adjacent to the proposed territory. In addition, Decca asserts that, since Venture, which serves Palm Cay, is not certificated as a wastewater utility, it does not have standing to oppose the application, as it cannot adequately provide the requested service to the proposed territory. Therefore, Decca argues, of the three objectors, none is a person substantially affected by Decca's application. Finally, Decca claims that the shopping center is currently under construction, and the objections are creating unnecessary delay and financial hardship.

On September 16, 1992, the objectors filed a response to Decca's motion to dismiss. The response states that the objectors believe that Decca is attempting to gain the proposed territory in order to be in a position to force Venture's territory, which is certificated for water service only, to connect to Decca's wastewater system. The objection is founded on a recently enacted Marion County ordinance which provides for all new subdivisions to be connected to an existing wastewater system if such systems are within one quarter mile or are contiguous to the subdivision. The objectors state that this new ordinance may be interpreted as mandating that the 40 vacant lots in the Palm Cay subdivision be connected to Decca's system instead of being served by septic systems.

The objectors' response also indicates that an alternative provider of water and wastewater service exists. Top of the World is mentioned in the objectors' response as the alternative source for the requested service. However, the Top of the World system is not regulated by this Commission. In addition, Top of the World did not request to serve the shopping center, nor did it file an objection to Decca's request to serve the shopping center.

The objectors did not request a hearing. The objectors are not within the proposed territory at issue, and they will not be substantially affected by the amendment of Decca's certificated territory. The objectors' complaints concerning the potential mandatory connection to an existing wastewater system, if Decca is permitted to expand its service to the proposed territory, should be directed to the Marion County Board of County Commissioners which is responsible for the ordinance, if such a mandate occurs in the future.

Moreover, the issue of whether Venture's service area will be required by Marion County to connect to Decca's wastewater system is not an issue that is subject to the Commission's regulation or jurisdiction. The central issue in this matter is how the proposed territory will receive the service it needs and is requesting. The objecting utility is not requesting to serve the proposed area, but is only attempting to disallow Decca from extending its territory in order to serve it.

Therefore, based on the foregoing information, we find that Venture Associates Utilities Corporation, Venture Associates Corporation, and Palm Cay Homeowners' Association are not substantially affected persons, and we hereby grant Decca's motion to dismiss the three objections.

We have authorized our Staff to administratively approve applications for amendments to certificates if the applications are complete and meet all legal requirements as provided in Section 367.045(2), Florida Statutes and Rule 25-30.036, Florida Administrative Code. Therefore, our Staff shall review the application, and, if it is determined that the application complies with this Commission's statutes and rules, our Staff may administratively approve the application and close the docket.

In consideration of the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission Decca Utilities' Motion to Dismiss the objections filed by Venture Associates Utilities Corporation, Venture Associates Corporation, and Palm Cay Homeowners' Association, Inc., in opposition to its application for an amendment is hereby granted. It is further

ORDERED that Commission Staff is hereby authorized to review and administratively approve Decca Utilities' application for an

ORDER NO. PSC-92-1146-FOF-WS  
DOCKET NO. 920579-WS  
PAGE 4

amendment to Certificates Nos. 378-S and 447-W in Marion County, Florida. It is further

ORDERED that this docket remain open until final disposition is made of Decca Utilities' application for an amendment to its service territory in Marion County, Florida.

By ORDER of the Florida Public Service Commission this 8th day of October, 1992.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

LK

by: Kay Flynn  
Chief, Bureau of Records

ORDER NO. PSC-92-1146-FOF-WS  
DOCKET NO. 920579-WS  
PAGE 5

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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.