

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Declaratory ) DOCKET NO. 930695-WU  
Statement of Lack of ) ORDER NO. PSC-94-0445-FOF-WU  
Jurisdiction of Florida Public ) ISSUED: April 13, 1994  
Service Commission, or, )  
Alternatively, Request for )  
Formal Hearing Concerning )  
Conduct of General Development )  
Utilities Inc., By Charlotte )  
County )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
SUSAN F. CLARK  
JULIA L. JOHNSON  
DIANE K. KIESLING  
LUIS J. LAUREDO

**ORDER DENYING PETITION FOR DECLARATORY STATEMENT  
AND ALTERNATIVE REQUEST FOR HEARING OF CHARLOTTE  
COUNTY AND GRANTING PETITION OF GENERAL DEVELOPMENT  
UTILITIES, INCORPORATED FOR DECLARATORY  
STATEMENT REGARDING COMMISSION JURISDICTION**

BY THE COMMISSION:

BACKGROUND

On July 15, 1993 Charlotte County (County) filed a Complaint For Declaratory Judgment of Lack of Jurisdiction or, Alternatively, Request for Formal Hearing. (County petition).

On August 9, 1993, General Development Utilities, Inc. (GDU) filed the following: (1) Motion to Intervene or, in the Alternative, Request for Declaratory Statement Regarding Jurisdiction; (2) Memorandum Regarding PSC's Jurisdiction; (3) Answer to Complaint; and (4) GDU's Counterclaims. (Utility petition). On September 7, 1993, the County filed its Reply to GDU's Memorandum Regarding PSC's Jurisdiction, Answer to Counterclaim and Reply to Affirmative Defenses.

The subject matter of these competing petitions for declaratory and other relief concerns allegations by the County that GDU overcharged the County for water supplied under an

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agreement entered into June 4, 1991, between GDU, the County and the Peace River/Manasota Regional Water Authority (Manasota).

The County originally filed the complaint on December 14, 1992 in Charlotte County Circuit Court. The Circuit Court abated its proceedings pending our decision on jurisdiction. Because GDU's facilities in Charlotte and Sarasota Counties were acquired by the City of North Port on December 9, 1992, the County argued that this Commission has no jurisdiction in this case. The County reasoned that since the GDU utility in Sarasota County no longer exists, Commission jurisdiction, therefore, no longer exists.

For its part, GDU argued that this Commission has jurisdiction in this case, which exclusively concerns GDU's regulated conduct of its utility operations pursuant to Commission tariffs between June 21, 1991 and December 9, 1992. GDU also requests that the petitions be consolidated.

#### DISCUSSION

Since both petitions address the same issues, efficiency would be attained by consolidating them. Therefore, we consider initially whether we should grant the statement requested by the County that this Commission lacks jurisdiction in this case.

Under §367.011(2), Florida Statutes, this Commission has

exclusive jurisdiction over each utility with respect to its authority, service and rates.

In construing that jurisdiction, it is settled that this Commission

has only those powers granted by statute expressly or by necessary implication.

Deltona Corp. v. Mayo, 342 So.2d 510 (Fla. 1977).

Since the jurisdictional question raised here is not addressed expressly by statute, the question is whether jurisdiction is necessarily implicated by statute. We conclude that it is, based on §367.011(2), F.S.

This Commission's exclusive jurisdiction over utility rates and service established therein necessarily implicates the power to resolve customer complaints of overbilling. Richter v. Florida Power Corp., 366 So.2d 798 (Fla. 2d DCA 1979); Florida Power Corporation v. Zenith Industries Company, 377 So.2d 203 (Fla. 2d DCA 1979) Cert. denied 388 So.2d 1120 (Fla. 1980). If merely

characterizing the dispute as a contract claim, as the County does here, were sufficient, we would be unable to exercise the exclusive jurisdiction in this area that the legislature intended to confer on this Commission.

To this general picture, the instant matter adds only the circumstance that the customer complaint, which speaks to regulated conduct by GDU prior to December 9, 1992, was filed by Charlotte County on December 14, 1992, five days after GDU sold its utility to the City of North Port. That circumstance, however, can have no effect on our jurisdiction to resolve customer complaints involving GDU's tariffed charges prior to December 9, 1992. Any other result would invade this Commission's exclusive jurisdiction over such matters pursuant to §367.011(2). It would also provide a precedent by which customer complainants could evade that exclusive jurisdiction, contrary to the legislative intent. See, e.g., Insurance Co. of North America v. Morgan, 406 So.2d 1227, 1229 (5th DCA 1981) (too narrow an interpretation of the Commission's discretion would create a regulatory "gap").

Moreover, while the Court stated in City of Cape Coral v. GAC Utilities, Inc. of Florida, 281 So. 2d 493, 495-6 (Fla. 1973):

Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof...[,]

it is clear that this jurisdictional issue must be determined initially by this Commission. Florida Public Service Commission v. Bryson, 569 So. 2d 1253 (Fla. 1990). There, the Court also held that

...the PSC must be allowed to act when it has at least a colorable claim that the matter under consideration falls within its exclusive jurisdiction as defined by statute.

569 So. 2d at 1255. Applying concurrently the analysis in Cape Coral and Bryson, we have no reasonable doubt that this Commission has at least a colorable claim that the matter under consideration is encompassed by §367.011(2), F.S.

In contrast, the County's arguments answer a question which is not relevant; i.e., do we have regulatory jurisdiction over the City of North Port's conduct of its utility subsequent to December 9, 1992. While the answer is obviously no (§367.021(2)), the irrelevance of that issue is reflected by the County's choice of

GDU as the respondent for its complaint, not the City of North Port. By clear implication of §367.011(2), which confers exclusive jurisdiction in this Commission over resolution of the issues raised by the County's customer complaint, that jurisdiction is not the captive of a customer's decision to file its complaint later rather than sooner.

It is also noted that the complexity of the tariff issues raised in this case and the proper role of Commission expertise in resolving them would additionally make this Commission the appropriate decision-maker under the doctrine of primary jurisdiction. Hill Top Developers v. Holiday Pines Service Corporation, 478 So. 2d 368 (Fla. App. 2nd Dist. 1985). The analysis in Hill Top is also useful to differentiate this case, involving a tariffed charge initially within our regulatory authority, from the kinds of cases relied upon by the County, which do not concern such charges. 478 So. 2d at 371. Indeed, the County's arguments in this case are analogous to the dissent in Hilltop, rejected by the Second District Court of Appeal.

Accordingly, GDU's request for declaratory statement regarding jurisdiction is granted, while the County's petition that we state our lack of jurisdiction is denied.

Finally, we address the County's request for a hearing. Specifically, the County seeks a hearing as to its allegations that GDU wrongfully sold Charlotte County GDU's water instead of Peace River water for which the County had already paid and which GDU was obligated to pass through to the County whenever possible. We believe these allegations in support of the County's overbilling claim are properly the subject of a customer complaint proceeding pursuant to Florida Administrative Code. R. 25-22.032. Such proceedings encompass the availability of a hearing. R. 25-22.032(8).

In view of the above, it is

ORDERED by the Florida Public Service Commission that the Petition of Charlotte County for a Declaratory Statement of Lack of Jurisdiction is denied. It is further

ORDERED that the Petition of General Development Utilities, Inc. for a Declaratory Statement regarding the Commission's jurisdiction is granted. It is further

ORDERED that this docket remain open for processing of Charlotte County's customer complaint pursuant to Florida Administrative Code R. 25-22.032.

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BY ORDER of the Florida Public Service Commission, this 13th  
day of April, 1994.

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BLANCA S. BAYO, Director  
Division of Records and Reporting

by: Key Flynn  
Chief, Bureau of Records

RCB

(S E A L)

Commissioners Johnson and Laredo dissent.

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

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