

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 950120-WS
certificate to provide water) ORDER NO. PSC-95-0795-FOF-WS
service in Manatee and Sarasota) ISSUED: July 3, 1995
Counties by Braden River)
Utilities)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING MOTION FOR EXPEDITED HEARING

BY THE COMMISSION:

BACKGROUND

On January 27, 1995, pursuant to Sections 367.031 and 367.045, Florida Statutes, Braden River Utility, Inc., (Braden River or utility) filed an application for an original certificate to provide non-potable water service to four planned and approved communities located in Manatee and Sarasota Counties. These four communities will include a service area of 8,700 equivalent residential connections (ERCs) plus 12 million square feet of commercial property, as well as country club communities, golf courses, tennis courts, parks, lake front recreational areas, and related commercial and support services.

Braden River's application complies with the noticing provisions of Section 367.045, Florida Statutes, and Rule 25-30.030, Florida Administrative Code. Braden River's application also contains a 99-year lease for the proposed service area, pursuant to Rule 25-30.033(1)(j), Florida Administrative Code. However, Braden River has not satisfied the minimum filing requirements for an original certificate, although it has been notified of its deficiencies. Therefore, an official filing date has not been established for this case. This will be discussed in greater detail later in this Order.

On February 28, 1995, Dolomite Utilities Corporation (Dolomite) filed an Objection to Braden River's Notice of

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Application and a Petition for Hearing. Accordingly, on April 21, 1995, this matter was scheduled for an April 24-26, 1996, administrative hearing. On April 24, 1995, Braden River filed a Motion for Expedited Hearing. On May 4, 1995, Dolomite timely filed an Objection to Motion for Expedited Hearing and a Request for Oral Argument on Objection to Motion for Expedited Hearing.

ORAL ARGUMENT

On May 4, 1995, Dolomite timely filed its Objection to Motion for Expedited Hearing and a Request for Oral Argument on Objection to Motion for Expedited Hearing. Dolomite did not give any specific reasons why granting its request for oral argument would aid us in comprehending and evaluating the issues.

The parties could have participated at the Agenda Conference and the utility's memorandum appears to contain sufficient argument for us to render a fair and complete evaluation of the merits without oral argument.

Nevertheless, because this matter has not been to hearing, we granted the utility's Request for Oral Argument, but limited argument to five minutes for each party who wished to speak.

MOTION FOR EXPEDITED HEARING

As stated earlier, in light of Dolomite's objection to the utility's notice of application, this matter was scheduled for a hearing. The only available hearing dates were April 24 - 26, 1996. On April 24, 1995, Braden River filed its Motion for Expedited Hearing. On May 4, Dolomite timely filed its Objection to Motion for Expedited Hearing and a Request for Oral Argument on Objection to Motion for Expedited Hearing.

In its motion, Braden River makes the following arguments:

1. Given the April 24-26, 1996, hearing dates, Braden River will not be authorized to provide non-potable water service until the conclusion of this docket in approximately June of 1996, assuming the Commission votes in its favor;
2. The delay resulting from the April hearing dates jeopardizes Braden River's ability to provide non-potable water service to a substantial number of customers, diminishes the value of the service proposed and diminishes Braden River's chances of providing service in "a timely and cost effective manner;" and

3. Braden River and its customers will be substantially prejudiced by the delay in hearing because, unlike a file and suspend rate case, Braden River cannot provide service and charge interim rates pending the certification proceeding.

In its objection, Dolomite argues that Braden River has not completed the minimum filing requirements for an original certificate. Furthermore, the requested service territory is within the Southwest Florida Water Management District (SWFWMD) Water Caution Area, Most Impact Area, and more discovery is necessary to understand the effect of SWFWMD's regulations on Braden River.

Dolomite also argues that issues of fact, policy and law will require additional time for research and discovery. Among the issues raised by Dolomite are whether Chapter 367, Florida Statutes, authorizes the Commission to issue an original certificate for non-potable water; whether conflicts may exist between water Management District conservation goals and the Commission's granting a certificate to Braden River; whether Braden River will use potentially potable water as a source of non-potable water; and whether the Commission has jurisdiction over Braden River, given the possibility that Braden River's service of the Manatee and Sarasota counties might not actually transverse county lines. Finally, Dolomite argues that Braden River fails to demonstrate how the current hearing schedule will jeopardize its ability to serve non-potable water, or that an immediate need for service actually exists.

We do not find that Braden River's satisfaction of minimum filing requirements affects the date of hearing in this docket. Braden River can supply any additional, necessary information when it cures its deficiencies or during the discovery process.

However we do find that Dolomite's objection sets forth numerous issues which illustrate the complex nature of this docket. We scheduled three days for the hearing given the complexities involved with this case. We attempted to set earlier hearing dates, and even attempted to find at least two days open for an earlier hearing. Upon reviewing our calendar, we find that earlier dates are not available.

Finally, we find that Braden River fails to specify the existence of any particular customer requiring the immediate provision of non-potable water. Therefore, any injury to Braden

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River as a result of the current hearing schedule is, at best, speculative. Based upon the foregoing, we hereby find it appropriate to deny Braden River's Motion for Expedited Hearing. This docket shall remain open pending the disposition of the April 24-26, 1996, hearing.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Dolomite Utilities Corporation's Request for Oral Argument on Objection to Motion for Expedited Hearing is hereby granted. It is further

ORDERED that Braden River Utilities, Inc.'s Motion for Expedited Hearing is hereby denied. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 3rd day of July, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

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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.

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Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.