

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 940303-WS
amendment of Certificates Nos.) ORDER NO. PSC-96-0329-FOF-WS
533-W and 464-S to add territory) ISSUED: March 6, 1996
in Lake and Orange Counties by)
SOUTHLAKE UTILITIES, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON

ORDER GRANTING MOTION FOR RECONSIDERATION AND
AMENDING ORDER NO. PSC-96-0066-FOF-WS

BY THE COMMISSION:

Background

On March 25, 1994, Southlake Utilities, Inc. (Southlake or Utility) filed an application with this Commission requesting amendment of Certificates Nos. 533-W and 464-S to include additional territory in Lake and Orange Counties. By Final Order No. PSC-94-1508-FOF-WS, issued December 8, 1994, we approved Southlake's application requesting the additional territory in Lake and Orange Counties.

On January 9, 1995, the Orange County Board of Commissioners (the Board or County) filed with this Commission an Opposition to Certificate Amendment Application, Request for Administrative Hearing, and Petition to Modify Order No. PSC-94-1508-FOF-WS (Pleading). On January 23, 1995, Southlake filed with this Commission a response to the Board's pleading. The Board's filing opposed Southlake's amendment only as it related to the territory in Orange County.

By Order No. PSC-96-0066-FOF-WS, issued January 16, 1996, we, in granting the Board's Opposition to Certificate Amendment and Request for Administrative Hearing, found that Order No. PSC-94-1508-FOF-WS was issued in error, and was therefore void. On January 26, 1996, Southlake filed a motion for reconsideration of Order No. PSC-96-0066-FOF-WS.

DOCUMENT NUMBER-DATE

02704 MAR-68

FPSC-RECORDS/REPORTING

Motion for Reconsideration

Rule 25-22.060(1)(a), Florida Administrative Code, permits a party who is adversely affected by an order of the Commission to file a motion for reconsideration of that order. Southlake timely filed the motion. The standard for determining whether reconsideration is appropriate is set forth in Diamond Cab Co. of Miami v. King, 146 So. 2d 889, 891 (Fla. 1962). In Diamond Cab, the Florida Supreme Court declared that the purpose of a petition for reconsideration is to bring to an agency's attention a point of law or fact which it overlooked or failed to consider when it rendered its order. In Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974), the Court found that the granting of a petition for reconsideration should be based upon specific factual matters set forth in the record and susceptible to review. We have applied this rationale in its review of Southlake's motion.

In its motion for reconsideration, Southlake asserts: 1) that pursuant to Order No. PSC-94-1508-FOF-WS, Southlake has been and is providing utility service to customers in Lake County; 2) that Order No. PSC-96-0066-FOF-WS voided the Commission's approval granting Southlake the authority to serve the Lake County territory; 3) that by Order No. PSC-96-0066-FOF-WS, Southlake has been put in a catch-22 of either having to withdraw service from existing customers or serve them without a certificate; 4) that the Commission is equitably estopped from withdrawing its approval of the Lake County territory extension; and 5) that Order No. PSC-94-1508-FOF-WS should stand pursuant to the rule of administrative finality.

Order No. PSC-96-0066-FOF-WS had the effect of abolishing our initial order granting to Southlake territory in Lake and Orange Counties. No written opposition has been filed with this Commission contesting Southlake's application for the territory in Lake County. The Board's opposition relates only to the Orange County territory included in Southlake's application for certificate amendment. The Board has represented that it is not opposed to Southlake providing service in Lake County.

We find that reconsideration is appropriate in this instance. It appears that Southlake has brought to our attention through its motion a point of fact which we overlooked or failed to consider when we rendered Order No. PSC-96-0066-FOF-WS, namely that by voiding Order No. PSC-94-1508-FOF-WS in its entirety, we abolished our prior approval of the territory extension in Lake County. Order No. PSC-94-1508-FOF-WS should have only been voided as it pertained to the territory extension in Orange County. Since reconsideration is appropriate pursuant to the Diamond Cab standard

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in that a mistake of fact has been made, we need not rule on the merits of Southlake's estoppel argument.

Southlake requests that the Commission withdraw Order No. PSC-96-0066-FOF-WS and let stand Order No. PSC-94-1508-FOF-WS, or in the alternative, amend Order No. PSC-96-0066-FOF-WS to allow Southlake to continue to provide service to the Lake County territory. We hereby grant Southlake's Motion for Reconsideration and alternative request and hereby amend Order No. PSC-96-0066-FOF-WS to reinstate our approval of Southlake's territory extension in Lake County, originally granted by Order No. PSC-94-1508-FOF-WS. Order No. PSC-96-0066-FOF-WS is affirmed in all other respects. Furthermore, this docket shall remain open for the Section 120.57, Florida Statutes, administrative hearing set by Order No. PSC-96-0066-FOF-WS.

Based on the foregoing, it is

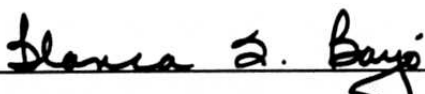
ORDERED by the Florida Public Service Commission that Southlake Utility's Motion for Reconsideration is hereby granted to the extent set forth in the body of this Order. It is further

ORDERED that Order No. PSC-96-0066-FOF-WS is hereby amended so that our approval of the territory extension in Lake County originally approved through Order No. PSC-94-1508-FOF-WS is reinstated. It is further

ORDERED that Order No. PSC-96-0066-FOF-WS is affirmed in all other respects. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 6th day of March, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.