

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
amendment of Certificates Nos.
570-W and 496-S to add territory
in Charlotte County by Florida
Water Services Corporation.

DOCKET NO. 980261-WS
ORDER NO. PSC-98-0730-PCO-WS
ISSUED: May 26, 1998

ORDER DENYING MOTION FOR PROTECTIVE ORDER

On February 19, 1998, Florida Water Services Corporation (FWSC or utility) filed an application for amendment of Certificates Nos. 570-W and 496-S in Charlotte County. On March 20, 1998, Lake Suzy Utilities, Inc. (Lake Suzy) timely filed an objection to FWSC's application. On March 27, 1998, FWSC served its First Request for Production of Documents and First Set of Interrogatories upon Lake Suzy. On April 13, 1998, Lake Suzy filed a Motion for Protective Order requesting that discovery not be had by FWSC in this proceeding. On April 27, 1998, FWSC timely filed a response to Lake Suzy's motion.

In its motion, Lake Suzy asserts that it presently has pending before the Commission in Docket No. 970657-WS an application for certificates to serve some of the same territory which is included in FWSC's application in this docket which if granted will render FWSC's application in this docket moot. Therefore, Lake Suzy asserts that until such time as the Commission acts upon Lake Suzy's application in Docket No. 970657-WS, it would be unduly burdensome and expensive for Lake Suzy to respond to FWSC's discovery.

In its response, FWSC argues that Lake Suzy's motion rests on the single erroneous premise that if the Commission grants Lake Suzy's application in Docket No. 970657-WS, FWSC's competing application in this docket is moot. FWSC argues that although certificates of authorization are intended as grants of exclusive territory for Commission regulated utilities, Chapter 367, Florida Statutes, does not preclude Commission approval of one utility's territory amendment simply because the territory requested is also requested by another utility in a pending proceeding or is within the existing territory of another utility, provided the Commission finds: (1) it is in the public interest to approve one utility's request over the interests of the other utility, (2) there will be no duplication of existing facilities, and (3) the existing

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facilities, if there will be a duplication, are inadequate or the person operating the facilities is unable, refuses, or neglects to provide reasonable and adequate service. Section 367.045(5)(a), Florida Statutes.

FWSC further argues that the Commission indisputably has the power to delete territory from a regulated utility's certificate, and, contrary to the contentions of Lake Suzy, the Commission does not process certification filings on a first-filed-first-served basis, but rather on the basis of which utility is better qualified to provide service, and the Commission's statutory duty to determine issues in accordance with the public interest. FWSC asserts that Lake Suzy's motion for a protective order is merely an attempt to stall and withhold information clearly relevant to the Commission's consideration of this matter and that Lake Suzy has failed to meet the applicable standard for showing that the discovery FWSC served is unduly burdensome.

Rule 1.280(c), Florida Rules of Civil Procedure, provides:

Upon motion by a party or by the person from whom the discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires

Pursuant to Section 367.045(5)(a), Florida Statutes, it appears that the Commission may consider and approve an application for territory which is already within the existing territory of another utility if certain conditions exist. Therefore, contrary to Lake Suzy's assertions, a decision on its application may not render FWSC's application moot. Accordingly, a response by Lake Suzy to FWSC's discovery would not constitute undue burden or expense.

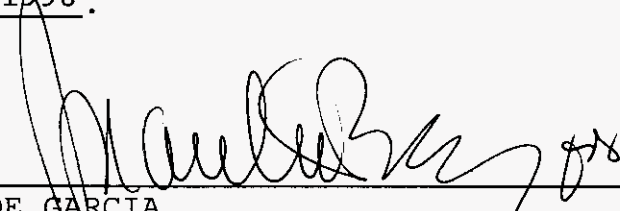
Based on the foregoing, I find that Lake Suzy has failed to demonstrate undue burden or expense and, hence, has not shown good cause. Therefore, in accordance with Rule 1.280, Florida Rules of Civil Procedure, Lake Suzy's motion for a protective order is hereby denied.

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Based on the foregoing, it is

ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that Lake Suzy Utilities, Inc.'s Motion for Protective Order is denied.

By ORDER of Commissioner Joe Garcia, as Prehearing Officer, this 26th day of May, 1998.



JOE GARCIA
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 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.