

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
amendment of Certificates Nos.
580-W and 500-S in Marion and
Sumter Counties by Little Sumter
Utility Company.

DOCKET NO. 980075-WS
ORDER NO. PSC-98-1093-FOF-WS
ISSUED: August 12, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER AMENDING CERTIFICATES NOS. 580-W AND 500-S TO INCLUDE
ADDITIONAL TERRITORY, ACKNOWLEDGING WITHDRAWAL OF OBJECTION
AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Little Sumter Utility Company (Little Sumter or utility) provides water and wastewater service to approximately 465 water customers and 429 wastewater customers in Marion and Sumter Counties, Florida. The utility's 1997 annual report shows an annual operating revenue of \$109,451 and a net operating loss of \$61,000. Little Sumter is a Class C utility.

On January 14, 1998 the utility applied for an amendment to Water and Wastewater Certificates Nos. 580-W and 500-S in Marion and Sumter Counties, pursuant to Rule 25-30.036(3), Florida Administrative Code. The utility seeks approval for 117 additional acres in Sumter County and 1,718 acres in Marion County.

OBJECTION BY CITY OF WILDWOOD

On February 4, 1998, the City of Wildwood (City) filed a response to Little Sumter's amendment application, in which the City indicated that it did not object to the utility's application.

DOCUMENT NUMBER-DATE

08571 AUG 12 88

FPSC-RECORDS/REPORTING

However, on February 13, 1998, the City filed an amended response, indicating that it did object to Little Sumter's application.

The City stated that the territory sought by Little Sumter falls within the Five Mile Utility Zone created by the City, by Ordinance Number 19-369 pursuant to Chapter 180, Florida Statutes. The City further stated that it wished to serve the territory sought by Little Sumter, and that expansion of Little Sumter's certificates would infringe upon the City's rights and obligations created by the establishment of the Five Mile Utility Zone and the City's comprehensive plan.

On March 2, 1998, the City filed a withdrawal of its objection. The City stated that it did not object to the utility's application, but its withdrawal should not be deemed as a waiver of objection to any subsequent applications for amendment of water and wastewater certificates. Based on the foregoing, we hereby acknowledge the City's withdrawal of its objection to Little Sumter's amendment application.

APPLICATION

Little Sumter's application is in compliance with Section 367.045, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code, concerning an application for amendment of certificates. The application contains a filing fee in the amount of \$4,500, as prescribed by Rule 25-30.020, Florida Administrative Code. In addition, Little Sumter has provided evidence, in the form of a warranty deed, that it owns the land upon which its facilities are located, as required by Rule 25-30.036, Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036, Florida Administrative Code. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission.

Little Sumter has provided proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. One objection to the application was filed by the City of Wildwood which, as discussed earlier, was subsequently withdrawn. The local planning agency was provided notice of the application and did not file a protest.

Little Sumter has provided information regarding its financial and technical ability to provide water and wastewater service to the proposed additional territory. In regard to financial ability, Little Sumter is affiliated with the developer of the property. The developer received industrial revenue bonds of \$8.5 million from Sumter County in 1997. The expansion of the utility will be funded primarily through the bond financing and from collection of contributions-in-aid-of-construction. Additional financing is available from bank lines of credit and from the developer. Currently, the utility has a \$3.0 million line of credit from SunTrust.

With regard to technical ability, Little Sumter has contracted with Operations and Management International as subsidiary of CH2M Hill, which operates the water and wastewater facilities. In addition, the utility has engaged the firm of Farner, Barley & Associates, Inc., which is experienced in the operation and regulation of water and wastewater utility systems. The utility's water and wastewater facilities have capacities of 5.328 million gallons per day (mgd) and .9 mgd, respectively. The current average daily flows for May, 1998 at the water treatment plant and wastewater treatment plant were .703 mgd and .069 mgd, respectively. The utility states that with this application, the existing service area and the proposed service area will fully utilize all existing water and wastewater capacities. Effluent disposal is accomplished by a combination of spray irrigation of a golf course, and rapid infiltration basins during excessive wet periods. The water and wastewater plants are in compliance with all applicable standards set by the Florida Department of Environmental Protection.

Department of Community Affairs

On June 5, 1998, the Department of Community Affairs (DCA) and this Commission entered into a Memorandum of Understanding (MOU). Pursuant to this MOU, the Commission has agreed to provide the DCA with copies of applications for original certificates and amendments of territory. In return, the DCA has agreed to provide for our review, pertinent information regarding need for service and compliance with local comprehensive plans for each application. Prior to this MOU, a trial period existed where the DCA reviewed these applications and provided us comments.

We received a memorandum from the DCA concerning Little Sumter's application on March 9, 1998. In its memorandum, the DCA concluded that expansion of the utility's service area should occur after the necessary Future Land Use Map changes have occurred and the Florida Quality Development (FQD) has received a development order. If the FQD is not approved along with a land use amendment, the DCA states that the proposed utility expansion would be a catalyst for the premature conversion of rural, agricultural land to urban uses. An FQD designation is assigned after a project meets a particular set of standards as defined by the DCA.

DCA indicates that Little Sumter seeks expansion of its service area to provide water and wastewater service to 117 acres adjacent to the southern boundary of the Sumter County portion of Tri County Villages Development of Regional Impact (Villages). The utility also seeks expansion to serve 1,718 acres proposed for the Villages of Marion Florida Quality Development in Marion County. The proposed expansion area is expected to be developed primarily for residential use.

In support of the conclusions in its memorandum, the DCA focuses upon the County comprehensive plans. DCA states that the proposed 1,718 acre utility expansion area is currently designated as rural. The DCA states that the Marion County Comprehensive Plan requires the provisions of water and wastewater service to convert land from an Urban Reserve Future Land Use Map designation to an Urban Expansion Future Land Use Map designation. The developer is proposing to qualify the Marion County expansion area as an FQD site. At the date of the memo, a pre-application meeting had been held for the FQD, but no application for development approval had been filed with the DCA. DCA states that FQD approval would facilitate the conversion of rural land. In the absence of FQD and land use amendment approval, conversion of rural, agricultural land to urban use would be premature.

The DCA also notes that the proposed 117 acre expansion area in Sumter County is currently designated agricultural on the Adopted Future Land Use Map. DCA states that Sumter County planning staff have verbally indicated that a country club, including a restaurant, and a polo field are planned for this area. The Sumter County Comprehensive Plan does not specifically provide for these uses in the Agricultural Future Land Use Map category other than to provide for "neighborhood commercial" uses in the agricultural area which include "small restaurants."

However, review of the DCA's memorandum does suggest need for service by noting that the area in Sumter County where the Tri County Villages Development of Regional Impact is located, is a rapidly urbanizing area, and 1,036 residential units were constructed during 1997. Sumter County currently does not provide water or wastewater and, therefore, is dependent upon private utility providers. The DCA notes that in Marion County, the Utilities Director has indicated that the County is seeking an agreement with Little Sumter to service additional area around the requested expansion area with water and wastewater. Further, the DCA states that the area just north of the proposed Marion County utility expansion contains a large, relatively undeveloped platted subdivision that lacks water and wastewater infrastructure and which development would be enhanced by the provision of central water and wastewater facilities.

We received two responses to the DCA's memorandum - one from the utility and a combined response from the utility and the land development attorney representing "The Villages." The utility states that, from a practical standpoint, in order to obtain a development order from a local government, it is necessary to identify the provider of water and wastewater service. If the provider is a Commission regulated utility, the developer cannot make representations to the government bodies about the provider of service, until the Commission takes its necessary action.

In their combined response, the utility and developer identified the six points in support of its position. The following is a brief summary of their position:

(1) The approval of the FQD and a Comprehensive Plan Amendment, Commission certification of new service area and processing of permits to build the facilities in sequential order could require almost two years. If these procedures are followed sequentially and not concurrently, the entire construction schedule for "The Villages of Marion" is thrown off.

(2) Requiring the utility to wait until the FQD is approved to receive certification of additional area is unworkable from a practical standpoint. The FQD application itself requires the identification of the water and sewer provider and a description of the existing or proposed facilities to serve the new development.

(3) Until the additional service area is certified by the Commission, the developer cannot document how the area will be served with utilities, which precludes obtaining financing.

(4) Marion County does not object to the application for expanding the service area.

(5) The only way a conversion of land from agriculture to urban could occur is for the local government and the DCA to approve it.

(6) The expansion areas are adjacent to the urban development, "The Villages", and adjacent to an existing area designated by Marion County as "Urban Expansion Area". To characterize the surrounding area as agricultural is not accurate.

Upon review of the points raised by the DCA, the utility and the developer, we do not find it appropriate to defer our decision pending the developer's receipt of an FQD designation. Obtaining the FQD designation will require specification of the utility service provider. A Commission-regulated utility cannot present itself as an available service provider to areas outside of its existing certificated area. While this type of provision by the DCA may be feasible in a scenario where utility service is provided by a governmental entity, it does not logically follow when the service provider is regulated by this Commission.

Further, we are not persuaded that approval of the utility service territory prior to land use amendments and FQD designations will generate premature growth in the area. Marion County will have to either initiate changes in its existing land use plans or deny permitting future development in the area, since the existing designations are not consistent with its future plans and area growth. County denial of permitting appears unlikely, because the County is coordinating with the utility to provide service to areas around the proposed expansion area. It does not appear that prior existence of a utility's certificated area will force growth. Growth is a function of demand and changes in land use. The provision of utility service is a subset of these factors, not the precursor.

With regard to consistency with local comprehensive plans, the utility complied with Rule 25-30.036(2)(c), Florida Administrative Code, which requires an amendment applicant to address consistency with the local comprehensive plan at the time the application is filed. Included in the application was a letter from a consultant, identified as a member of the American Institute of Certified Planners, which indicated that the application had been reviewed in conjunction with the Future Land Use elements and the Sanitary Sewer and Potable Water subelements of the Marion County and Sumter County Comprehensive Plans. The consultant stated that to the best of his knowledge, the provision of water and sewer service as described in the utility's application is consistent the goals, objectives and policies of the Sumter County and Marion County Comprehensive Plans.

Finally, we note that pursuant to Section 367.045(5)(b), Florida Statutes, we need not consider the local comprehensive plans unless an objection to the application has been filed. The Counties have not objected to this application. In fact, Marion County has confirmed with our staff that it has no objection to the utility's request to expand its territory. The County confirmed that it plans for Little Sumter to be the regional provider of service in this area of the County, and that it was negotiating an agreement to purchase bulk utility service from Little Sumter at some point in the future.

Approval of Application

Based on the foregoing, we find it appropriate to amend the utility's certificates, as set forth in its application. The approved territory is described in Attachment A of this Order which, by reference, is incorporated herein.

RATES AND CHARGES

Little Sumter's approved rates and charges were effective pursuant to Order No. PSC-96-1132-FOF-WS, issued September 10, 1996, in Docket No. 960305-WS. Little Sumter shall continue to charge its existing rates and charges until authorized to change by this Commission in a subsequent proceeding. The utility has filed revised tariff sheets incorporating the additional territory into its tariff and returned its certificate for entry reflecting the additional territory. Since no further action is necessary, this docket shall be closed.

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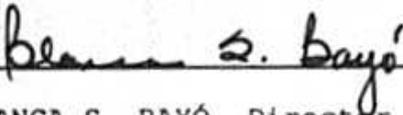
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Certificates Nos. 580-W and 500-S, held by Little Sumter Utility Company, 1100 Main Street, Lady Lake, Florida 32159, are hereby amended to include the territory described in Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that Little Sumter Utility Company shall charge the customers in the territory added herein the rates and charges approved in its tariff until authorized to change by this Commission. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 12th day of August, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

LITTLE SUMTER UTILITY COMPANY
MARION AND SUMTER COUNTIES
WATER AND WASTEWATER SERVICE AREA

EXPANSION AREA "A"

A TRACT OF LAND IN SECTIONS 27, 28, 29, 32, 33 & 34, TOWNSHIP 17 SOUTH, RANGE 23 EAST, MARION COUNTY, FLORIDA DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF SECTION 33; THENCE ALONG THE SOUTH LINE OF SECTION 33 RUN WESTERLY TO THE S.W. CORNER OF THE E1/2 OF THE SW1/4 OF SECTION 33; THENCE RUN NORTHERLY TO THE S.E. CORNER OF THE SE1/4 OF THE NW1/4 OF THE SW1/4 OF SECTION 33; THENCE RUN WESTERLY TO THE S.W. CORNER OF THE W1/2 OF THE SE1/4 OF THE NW1/4 OF THE SW1/4 OF SECTION 33; THENCE RUN NORTHERLY TO THE N.W. CORNER OF SAID W1/2 OF SE1/4 OF NW1/4 OF SW1/4; THENCE RUN WESTERLY TO THE S.W. CORNER OF THE W3/4 OF THE N1/2 OF THE NW1/4 OF THE SW1/4 OF SECTION 33; THENCE RUN NORTHERLY TO THE N.W. CORNER OF SAID W3/4 OF N1/2 OF NW1/4 OF SW1/4; THENCE RUN EASTERLY TO THE S.E. CORNER OF THE SW1/4 OF THE SW1/4 OF THE NW1/4 OF SECTION 33; THENCE RUN NORTHERLY TO THE N.E. CORNER OF SAID SW1/4 OF SW1/4 OF NW1/4; THENCE RUN WESTERLY TO THE N.W. CORNER OF SAID SW1/4 OF SW1/4 OF NW1/4; THENCE RUN SOUTHERLY TO THE S.E. CORNER OF THE NORTH 1/2 OF SECTION 32; THENCE RUN WESTERLY TO THE S.W. CORNER OF SAID NORTH 1/2 OF SECTION 32; THENCE RUN NORTHERLY TO THE N.W. CORNER OF SECTION 32; THENCE RUN EASTERLY TO THE S.W. CORNER OF THE E1/2 OF THE SE1/4 OF SECTION 29; THENCE RUN NORTHERLY ALONG THE WEST LINE OF SAID E1/2 OF SE1/4 TO THE SOUTH R/W LINE OF COUNTY ROAD 42; THENCE ALONG SAID R/W LINE RUN EASTERLY TO THE EAST LINE OF THE S1/2 OF SECTION 28; THENCE ALONG SAID EAST LINE RUN SOUTHERLY TO THE N.W. CORNER OF THE W1/4 OF THE SW1/4 OF THE SW1/4 OF SECTION 27; THENCE RUN EASTERLY TO THE N.E. CORNER OF SAID W1/4 OF SW1/4 OF SW1/4; THENCE RUN SOUTHERLY TO THE N.W. CORNER OF THE E3/4 OF THE S1/2 OF THE SW1/4 OF THE SW1/4 OF SECTION 27; THENCE RUN EASTERLY ALONG THE NORTH LINE OF SAID E3/4 OF S1/2 OF SW 1/4 OF SW 1/4 TO A POINT THAT IS 70 FEET WEST OF THE EAST LINE OF THE W1/2 OF THE SW1/4 OF SECTION 27; THENCE PARALLEL WITH SAID EAST LINE OF W1/2 OF SW1/4 RUN NORTHERLY TO THE SOUTH R/W LINE OF COUNTY ROAD 42; THENCE ALONG SAID R/W LINE RUN EASTERLY 70 FEET TO THE EAST LINE OF THE NW1/4 OF THE SW1/4 OF SECTION 27; THENCE RUN SOUTHERLY TO THE N.W.

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ATTACHMENT A
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LITTLE SUMTER UTILITY COMPANY

MARION AND SUMTER COUNTIES

WATER AND WASTEWATER SERVICE AREA

CORNER OF THE SE1/4 OF THE SW1/4 OF SECTION 27; THENCE RUN EASTERLY TO THE N.E. CORNER OF SAID SE1/4 OF THE SW1/4; THENCE CONTINUE EASTERLY TO THE N.E. CORNER OF THE W1/4 OF THE SE1/4 OF THE SE1/4 OF SECTION 27; THENCE RUN SOUTHERLY TO THE S.E. CORNER OF THE W1/4 OF THE SE1/4 OF THE SE1/4; THENCE RUN WESTERLY TO THE S.W. CORNER OF SAID SW1/4 OF SE1/4; THENCE RUN SOUTHERLY TO THE N.E. CORNER OF THE E1/2 OF THE SE1/4 OF THE NW1/4 OF SECTION 34; THENCE RUN WESTERLY TO THE N.W. CORNER OF SAID E1/2 OF SE1/4 OF NW1/4; THENCE RUN SOUTHERLY TO THE S.W. CORNER OF SAID E1/2 OF SE1/4 OF NW1/4; THENCE RUN EASTERLY TO THE S.E. CORNER OF SAID E1/2 OF SE1/4 OF NW1/4; THENCE RUN SOUTHERLY TO THE N.E. CORNER OF THE NE1/4 OF THE SE1/4 OF THE SW1/4 OF SECTION 34; THENCE RUN WESTERLY TO THE N.W. CORNER OF SAID NE1/4 OF SE1/4 OF SW1/4; THENCE RUN SOUTHERLY TO THE S.W. CORNER OF SAID NE1/4 OF SE1/4 OF SW1/4; THENCE RUN EASTERLY TO THE S.E. CORNER OF SAID NE1/4 OF SE1/4 OF SW1/4; THENCE RUN SOUTHERLY TO THE S.E. CORNER OF THE WEST 1/2 OF SECTION 34; THENCE RUN WESTERLY ALONG THE SOUTH LINE OF SECTION 34 TO THE POINT OF BEGINNING.

(CONTAINING 1717.6 ACRES, MORE OR LESS)

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ATTACHMENT A
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LITTLE SUMTER UTILITY COMPANY
MARION AND SUMTER COUNTIES
WATER AND WASTEWATER SERVICE AREA
EXPANSION AREA "B"

A TRACT OF LAND IN SECTION 15, TOWNSHIP 18 SOUTH, RANGE 23 EAST, SUMTER COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGIN AT THE N.W. CORNER OF THE W1/2 OF THE NE1/4 OF SECTION 15; RUN THENCE EASTERLY TO THE N.E. CORNER OF SECTION 15; THENCE RUN SOUTHERLY TO THE S.E. CORNER OF THE NORTH 15 ACRES OF THE NE1/4 OF SECTION 15; THENCE RUN WESTERLY TO THE S.W. CORNER OF SAID NORTH 15 ACRES OF NE1/4 OF NE1/4; THENCE RUN SOUTHERLY TO THE S.E. CORNER OF THE W1/2 OF NE1/4 OF SECTION 15; THENCE RUN WESTERLY 430.00 FEET; THENCE RUN SOUTHERLY PARALLEL WITH THE EAST LINE OF THE NW1/4 OF THE SE1/4 OF SECTION 15 TO THE NORTHERLY R/W LINE OF COUNTY ROAD 466; THENCE RUN NORTHWESTERLY ALONG SAID R/W LINE TO THE WEST LINE OF THE E1/2 OF THE SE1/4 OF THE NW1/4 OF SECTION 15; THENCE RUN NORTHERLY TO THE N.W. CORNER OF SAID E1/2 OF SE1/4 OF NW1/4; THENCE RUN EASTERLY TO THE N.E. CORNER OF SAID E1/2 OF SE1/4 OF NW1/4; THENCE RUN NORTHERLY ALONG THE WEST LINE OF THE W1/2 OF NE1/4 OF SECTION 15 TO A POINT THAT IS 60.00 FEET SOUTH OF THE AFORESAID N.W. CORNER OF THE W1/2 OF THE NE1/4; THENCE NORTHWESTERLY TO AN INTERSECTION WITH THE NORTH BOUNDARY OF SAID SECTION 15; SAID POINT BEING 60.00 FEET WEST OF THE AFORESAID N.W. CORNER; THENCE EASTERLY ALONG SAID SECTION LINE TO THE POINT OF BEGINNING.

(CONTAINING 117.2 ACRES, MORE OR LESS)