

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original certificate to operate water and wastewater utility in Bay County by Dana Utility Corporation.

DOCKET NO. 991632-WS  
ORDER NO. PSC-00-0227-FOF-WS  
ISSUED: February 3, 2000

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING APPLICATION FOR  
ORIGINAL WATER AND WASTEWATER CERTIFICATES AND  
ISSUING CERTIFICATES NOS. 614-W AND 529-S

BY THE COMMISSION:

BACKGROUND

On October 20, 1999, Dana Utility Corporation (Dana or utility) filed an application for original certificates to operate a water and wastewater facility in Bay County, Florida. Simultaneously, the utility filed a petition for temporary waiver of Rules 25-30.033 (1)(h), (k), (m), (o), (t), (u), (v), (w); (2); (3); and (4), Florida Administrative Code. By Order No. PSC-00-0127-PAA-WS, issued January 14, 2000, we granted Dana's petition for temporary waiver of Rules 25-30.033 (1)(h), (k), (m), (o), (t), (u), (v), (w); (2); (3); and (4), Florida Administrative Code.

Dana is a wholly owned subsidiary of Lake Merial Development Company, Inc. (Lake Merial). Dana was formed for the specific purpose of providing water and wastewater service to Lake Merial multi-use development. Dana's parent company, Lake Merial, has entered into an agreement with Fancher Management Group, Inc. (Fancher Management) to provide assessment, planning, and operational services for Dana. Lake Merial owns approximately 95% (approximately 2,100 acres) of the land included within the territorial description proposed to be served by Dana. The remainder of the land has been donated to the Bay County School

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Board for the construction of a public school which is presently under construction. This school will require utility service beginning on or about March 1, 2000. Further, the development is scheduled to have a substantial number of lots available for service beginning in the Summer of 2000.

Since we granted the utility's petition for temporary waiver of the rules relating to the setting of initial rates and charges, this action only pertains to Dana's application for original water and wastewater certificates. The issue of initial rates and charges will be addressed at a later time.

#### APPLICATION FOR ORIGINAL CERTIFICATES

As stated earlier, Dana filed an application for original certificates to operate a water and wastewater facility in Bay County, Florida and was granted a temporary waiver of Rules 25-30.033 (1)(h), (k), (m), (o), (t), (u), (v), (w); (2); (3); and (4), Florida Administrative Code. The rules that were temporarily waived would have required the utility to file the financial, engineering and operational information necessary to establish initial rates and charges. We find that the application as filed is otherwise in compliance with Section 367.045, Florida Statutes, and all governing statutes and administrative rules concerning applications for original certificates.

The utility submitted a check in the amount of \$3,000 with its application for original certificates. The correct filing fee for an original certificate application with a proposed capacity to of 4,000 equivalent residential connections or more is \$3000 pursuant to Rule 25-30.020, Florida Administrative Code. We find that the utility has complied with Rule 25-30.020, Florida Administrative Code.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the notice of application have been received and the time for filing such has expired.

An adequate service territory description has been provided as prescribed by Rule 25-30.033(1)(l), Florida Administrative Code. A description of the territory requested by Dana is appended to this Order as Attachment A, which by reference is incorporated herein.

Dana does not currently own the land where the water and wastewater facilities will be constructed. The current owner is Dana's sole shareholder, Lake Merial. However, pursuant to Rule 25-30.033(1)(j), Florida Administrative Code, Dana has provided an executed copy of a contract for the sale and purchase of the land and an unexecuted copy of the related warranty deed. Rule 25-30.033(1)(j), Florida Administrative Code, also requires that the utility provide an executed copy of the warranty deed within 30 days of the issuance date of the order granting original certificates. We find that currently the utility has met criteria set forth in the rule but will need to file the executed warranty deed within 30 days of the issuance date of this order.

#### Need for Service

Dana has demonstrated Lake Merial development's need for water and wastewater service. Lake Merial intends to have lots available for service by the Summer of 2000 in the Lake Merial development. Moreover, a public school is currently under construction in this area which will require water and wastewater service beginning March 1, 2000. The closest city, Lynn Haven, is unable to provide service to the area. The two closest public utilities, Bay County and Gulf Coast Electric Cooperative, are unable to provide service at this time. The earliest time either utility could provide water service is three to five years from now and longer for wastewater.

In its application, Dana states that the provision of water and wastewater service to the Lake Merial development is consistent with the water and wastewater sections of the Bay County Comprehensive Plan, as approved by the Department of Community Affairs (DCA). The utility included a copy of the Development Agreement (Agreement) which was entered into with Bay County on February 2, 1999 by the owner of utility. This Agreement contains provisions which require the Developer, Lake Merial, to provide

sanitary sewer and potable water to the Lake Merial development project. Further, the Agreement finds that the Lake Merial development project is consistent with the County's 2000 Comprehensive Plan. This Agreement is recorded in the Official Records of Bay County, Florida. The DCA reviewed Dana's application for original certificates, finding no growth management concerns had been identified and that "the request is consistent with the Developer Agreement entered into between the County and the developer on February 2, 1999." We find that the utility has met the requirement of Rule 25-30.033 (1)(f), Florida Administrative Code, in that the provision of service is consistent with the water and wastewater sections of the local comprehensive plan as approved by the DCA.

#### Financial and Technical Ability

As stated earlier, we approved a temporary waiver for filing part of the required financial and technical information. However, we find that Dana has provided sufficient information to demonstrate that it will have the financial and technical ability to provide water and wastewater service to the proposed service area.

Dana is a wholly-owned subsidiary of Lake Merial. Lake Merial has signed an agreement with Dana to provide financial assistance to the utility for a period of ten years. Lake Merial has obtained a Utility Loan Commitment from Dana Properties, Ltd. (Dana Properties), its parent company, that provides for construction and operational funding for the utility of up to \$4,500,000. Further, Dana filed a copy of the financial statement of Dana Properties that shows a net worth of approximately 3,900,000, pounds sterling, which is over \$6,000,000 U.S. dollars.

Regarding technical ability, Mr. Goldstein, President of Lake Merial, has 25 years of management experience including a position as Chief Operational Officer for developments which operated water and wastewater facilities. Also, Dana has entered into an agreement with Fancher Management to provide assessment, planning, and management service for the utility. Mr. Fancher, president of

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Fancher Management, has more than 25 years experience in the operations and management of water and wastewater facilities.

CONCLUSION AND FINDINGS

Based on the foregoing, we find that Dana has demonstrated a need for service to the proposed service area, the absence of an alternative source of service, and the technical and financial ability to provide service to the area. Further, we find that it is in the public interest to grant Dana's application for water and wastewater certificates to provide service to the territory described in Attachment A, and the application is approved. The utility shall be issued Water Certificate No. 614-W and Wastewater Certificate No. 529-S.

As previously noted, by Order No. PSC-00-0127-PAA-WS, the utility was granted a temporary waiver of the rules that required filing of information necessary to establish initial rates and charges. Therefore, the utility shall file a separate application in this docket for initial rates and charges with supporting financial, engineering and operating information required by the rules which have been temporarily waived. The application and supporting information shall be filed by February 20, 2000. Further, the utility must file with this Commission an executed copy of the warranty deed within 30 days of the issuance date of this Order pursuant to Rule 25-30.033(1)(j), Florida Administrative Code.

This docket shall remain open pending completion of the establishment of initial rates and charges. Further, the utility is placed on notice that it cannot receive compensation for any utility service until its rates and charges have been established by future Commission order pursuant to Sections 367.045, and 367.081(1), Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application submitted by Dana Utility Corporation, 13100 State Road 77, Southport, Florida 32409, for certificates of authorization to

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provide water and wastewater serve to the area described in Attachment A is hereby approved. It is further

ORDERED that Attachment A is incorporated herein by reference. It is further

ORDERED that Dana Utility Corporation shall be issued Water Certificate No. 614-W and Wastewater Certificate No. 529-S. It is further

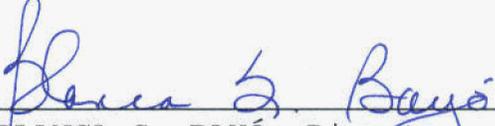
ORDERED that Dana Utility Corporation shall submit an application for the establishment of initial rates and charges with the supporting financial, engineering and operational information previously temporarily waived. The application and supporting information shall be filed by February 20, 2000. It is further

ORDERED that Dana Utility Corporation shall file an executed copy of the warranty deed within 30 days of the issuance date of this Order pursuant to Rule 25-30.033(1)(j). It is further

ORDERED that Dana Utility Corporation shall not receive any compensation for utility service until rates and charges have been established by this Commission. It is further

ORDERED that this docket shall remain opening pending the completion of the establishment of rates and charges for Dana Utility Corporation.

By ORDER of the Florida Public Service Commission this 3rd day of February, 2000.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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.

DANA UTILITY CORPORATION

TERRITORY DESCRIPTION

WATER AND WASTEWATER SERVICE AREA

BAY COUNTY

PARCEL I: Commence at the Northwest Corner of Section 15, Township 1 South, Range 14 West, Bay County, Florida. Thence  $S01^{\circ}12'22''W$  along the West line of said Section 15 for 409.73 feet to the centerline of construction of a Gulf Power Company easement (100 foot wide), described in Deed Book 116, 105, in Public Records of Bay County, Florida, for the Point of Beginning. Thence  $S51^{\circ}03'38''E$  along the centerline of construction of said Gulf Power Company Easement for 930.87 feet; thence  $S01^{\circ}12'45''W$  for 2478.33 feet to the centerline of a dirt road; thence  $N73^{\circ}10'07''W$  along said centerline for 243.01 feet; thence  $N74^{\circ}46'38''W$  along said centerline for 517.31 feet to said West line of Section 15; thence  $N01^{\circ}12'22''E$  along said West line for 2857.26 feet to the Point of Beginning.

PARCEL II: Section 16, Township 1 South, Range 14 West, Bay County, Florida.

**LESS AND EXCEPT**: Commence at the Northeast Corner of Section 16, Township 1 South, Range 14 West, Bay County, Florida. Thence  $N88^{\circ}14'33''W$  along the North line of said Section 16 for 536.30 feet to the centerline of construction of a Gulf Power Company easement (100 foot wide), as described in Deed Book 116, Page 105, of the Public Records of Bay County, Florida. Thence continue  $N88^{\circ}14'33''W$  along said North line of Section 16 for 708.58 feet to the Point of Beginning. Thence  $S03^{\circ}49'15''E$  for 1341.86 feet; thence North  $88^{\circ}57'07''W$  for 4147.18 feet to the West line of said Section 16; thence  $N01^{\circ}03'36''E$  along said West line for 1386.96 feet to the Northwest corner of said Section 16; thence  $S88^{\circ}14'32''E$  along the North line of said Section 16 for 4033.49 feet to the Point of Beginning.

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**ALSO LESS AND EXCEPT:** Begin at the Northeast Corner of Section 16, Township 1 South, Range 14 West, Bay County, Florida. Thence N88°14'33"W along the North line of said Section 16 for 536.30 feet to the centerline of construction of a Gulf Power Company Easement, described in Deed Book 116, Page 105, of the Public Records of Bay County, Florida. Thence S51°03'38"E along said centerline of construction for 678.09 feet to the East line of said Section 16; thence N01°12'22"E along said East line for 409.73 feet to the Point of Beginning.

PARCEL III: The West Half of the Northeast Quarter of the Northwest Quarter; the South Half of the Northwest Quarter; the Southwest Quarter; the Northwest Quarter of the Southeast Quarter; the East Half of the Southeast Quarter; the South Half of the Northeast Quarter; Section 17, Township 1 South, Range 14 West.

**LESS AND EXCEPT:** Commence at the Northeast Corner of Section 16, Township 1 South, Range 14 West, Bay County, Florida. Thence N88°14'33"W along the North line of said Section 16 for 1244.88 feet; thence S03°49'15"E for 1341.86 feet; thence N88°57'07"W for 4147.18 feet to the East line of Section 17, Township 1 South, Range 14 West, for the Point of Beginning. Thence continue N88°57'07"W for 1979.26 feet to the West line of the East Half of the Southwest Quarter of the Northeast Quarter of said Section 17; thence N00°55'34"E along said West line for 42.04 feet to the North line of the South Half of the Northeast Quarter of said Section 17; thence S89°50'45"E along said North line for 1979.60 feet to the East line of said Section 17; thence S01°03'36"E along said East line for 72.92 feet to the Point of Beginning.

PARCEL IV: That portion of Section 19, Township 1 South, Range 14 West, Bay County Florida, East of State Road No. 77.

PARCELS V, VI & VII: Begin at the Southwest Corner of Section 20, Township 1 South, Range 14 West, in Bay County, Florida; thence North 89°33'17" East along the South line of Section 20 for 1275.18 feet; thence South 01°20'42" West for 1318.19 feet; thence North 89°47'31" East for 1584.08 feet to the Westerly right of way line of Prosper Drive; thence Northeasterly along said right of way line; the following courses and distances: North 19°30'31" East for

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986.23 feet, North 19°50'23" East for 424.25 feet, North 18°52'36" East for 617.29 feet; thence North 20°16'54" East for 446.84 feet, North 23°48'30" East for 392.90 feet; North 28°50'30" East for 582.69 feet, North 32°39'03" East for 506.28 feet, North 33°26'17" East for 1587.99 feet, North 33°26'17" East for 917.70 feet, North 32°07'37" East for 487.21 feet, North 36°44'20" East for 540.58 feet to the North line of Section 21, Township 1 South, Range 14 West in Bay County, Florida; thence departing said Westerly right of way line, bear North 87°47'21" West along the North line of said Section 21 for 1023.11 feet to the Northwest Corner of said Section 21; thence South 89°54'31" West for 1313.66 feet; thence South 89°54'26" West for 1313.76 feet; thence South 89°54'46" West for 2,627.49 feet to the Northwest Corner of Section 20, Township 1 South, Range 14 West in Bay County, Florida; thence South 00°35'42" West for 5254.18 feet to the Southwest Corner of said Section and the Point of Beginning. Containing 615.73 Acres More or Less.