

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 and application for deletion of territory and cancellation of Certificate Nos. 614-W and 529-S.

DOCKET NO. 991632-WS  
ORDER NO. PSC-02-1749-FOF-WS  
ISSUED: December 12, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

ORDER GRANTING DANA'S APPLICATION TO DELETE ITS ENTIRE TERRITORY  
AND CANCEL ITS CERTIFICATES NOS. 614-W AND 529-S WITHOUT  
PREJUDICE

BY THE COMMISSION:

BACKGROUND

Dana Utility Corporation (Dana or utility) was granted original Certificates Nos. 614-W and 529-S to operate water and wastewater facilities in Bay County in this docket by Order No. PSC-00-0227-WS-FOF-WS, issued February 3, 2000. Dana is located in an area of the Northwest Florida Water Management District which is not a water resource caution area. Currently, Dana has no utility facilities, customers, or revenues.

Dana is a wholly owned subsidiary of Lake Merial Development Company, Inc. (Lake Merial) and was formed for the purpose of providing water and wastewater service to Lake Merial's proposed multi-use development in Bay County. Lake Merial owns approximately 2,100 acres or 95% of the land originally proposed to

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be served by Dana. The remainder of the land was donated by Lake Merial to the Bay County School Board for the construction of the Deane Bozeman Learning Center (public school).

Simultaneous with its application for original certificates, the utility filed a petition for temporary waiver of Rule 25-30.033(1)(h), (k), (m), (o), (t), (u), (v), (w); (2); (3); and (4), Florida Administrative Code. The rule addresses the information necessary for setting initial rates and charges along with the supporting engineering, operational, and financial information.

By Order No. PSC-00-0127-PAA-WS, issued January 14, 2000, the utility's petition for temporary waiver of the rule was granted. Pursuant to the subsequent Order No. PSC-00-0227-FOF-WS, which granted the utility's certificates, Dana was ordered to file the temporarily waived rates and charges information by February 20, 2000. On February 16, 2000, the utility instead filed a Motion for Extension of Time.

At the March 28, 2000, Agenda Conference on the Motion, we expressed concerns regarding the utility's inability to meet the public school's need for service. As a consequence, we deferred ruling on the Motion pending further inquiry by our staff. We directed our staff to inform the Department of Community Affairs (DCA) and Department of Environmental Protection (DEP) of the proposed delay in service and seek each agency's comments. Further, we directed our staff to address the possibility of cancelling the utility's certificates of authorization along with a recommendation on the appropriateness of initiating a show cause against the utility for failure to provide service to the public school.

Our decision on the results of our staff's inquiries was set forth in Order No. PSC-00-1376-PCO-WS, issued July 31, 2000. In the order, we affirmed that the DCA had not identified any growth management concerns related to the consistency of the utility's motion with Bay County's comprehensive plan. While the DEP had already issued construction permits, the order indicated that DEP could either revoke or modify the permits to dry-line permits based upon our determination regarding the utility's certificates. With regard to the need for service, the order indicated that the public school had chosen to construct its own facilities and there were no

other service needs identified at that time. In addition, the order clarified that Lake Merial's parent company was in the process of negotiating a possible sale of the Lake Merial property and; as a result, all development had been suspended.

Based on the above information, we granted the utility's Motion for Extension of Time until August 20, 2000, to file information necessary to establish initial rates and charges. While we declined to initiate revocation or show cause proceedings at that time, the order put the utility on notice that failure to meet the August 20, 2000, filing date would result in the initiation of revocation proceedings.

On August 18, 2000, the utility filed the required application for initial rates and charges in this docket. However, the resulting rates and charges were, in our staff's opinion, inordinately high. Our staff had a series of conversations with the utility in which our staff expressed concerns regarding the reasonableness of the proposed rates and charges. After each conversation, the utility was given the opportunity to modify its data. However, because the utility's parent was still not ready to proceed with construction of the development, there was little incentive to invest the time and resources necessary to modify the filing. In addition, the utility allowed its construction permits with the DEP to elapse.

By letter dated December 12, 2001, our staff inquired of the utility whether any basis for certificates still existed. By letter filed January 15, 2002, the utility concurred that no basis existed and offered to voluntarily tender its certificates. By letter dated March 11, 2002, our staff provided the utility with application and instructions for filing for a deletion of its service territory and cancellation of its certificates. On August 19, 2002, a supplemental application for deletion of territory was filed in this docket. No protests to the notice of application were received by this Commission and the time for filing such has expired.

This Order addresses the utility's request to delete its service territory and cancel its certificates. We have jurisdiction pursuant to Section 367.045, Florida Statutes.

DELETION OF TERRITORY AND CANCELLATION OF CERTIFICATES

As noted above, on August 19, 2002, the utility filed an application to delete its service territory and to cancel its certificates. As indicated in the Background, Dana has no utility facilities, customers, or revenues.

The application meets the requirements of Section 367.045(2), Florida Statutes, and Rule 25-30.036(4), Florida Administrative Code. In addition, the utility filed the appropriate filing fees pursuant to Rule 25-30.020, Florida Administrative Code, and fulfilled the noticing requirements pursuant to Rule 25-30.030, Florida Administrative Code. No protests to the application were received by this Commission and the time for filing such has expired.

Rule 25-30.036(4) (c), (d), and (e), Florida Administrative Code, requires modified system maps, number of active connections, and modified territory maps, respectively. However, since the territory to be deleted represents all of Dana's service area, a modified territory map is not necessary. The utility already has a territory map on file in the docket. As noted above, there are no active connections in the territory to be deleted. Since the utility had not yet begun construction, modified system maps do not apply. The utility already has proposed system maps on file in the docket. A description of the territory to be deleted is appended to this Order as Attachment A and is hereby incorporated by reference.

Rule 25-30.036(4) (f), (g), and (h), Florida Administrative Code, requires statements specifying the reason for the proposed deletion of territory, why the proposed deletion is in the public interest, and the effect of the proposed deletion on the ability of current and potential customers to receive water and wastewater service. The application indicated that, although Dana's parent was no longer seeking to sell the Lake Merial property, it was in the process of changing the entire development plan which would require a new Development Agreement with Bay County. Under these circumstances, the application indicated it would be some time before construction could commence. Since the reason for Dana's original request for certificates no longer exists, the utility wished to voluntarily tender its certificates for cancellation.

Since no customers are currently being served, the territory deletion will have no effect on existing service. Also, since there can be no future customers without development, the territory deletion will have no effect on potential customers, either. We note that the public school has its own system and will be unaffected. Under these circumstances, we find that there is no public interest served by keeping Dana's certificates active.

Rule 25-30.036(4) (i), (j), (k), and (l), Florida Administrative Code, requires tariff sheets reflecting the revised service area, return of the utility's original certificate(s), the number of the most recent order by our establishing or changing rates and charges, and an affidavit that the utility has tariffs on file with us. Since we have never established rates and charges for Dana, there are no orders on rates and charges nor any tariffs on file. However, Dana did return its original certificates for cancellation.

Rule 25-30.036(4)(l), Florida Administrative Code, also requires an affidavit that the utility has annual reports on file with us. Since the utility has no facilities, customers, or revenues, it has been filing the minimum annual report and regulatory assessment fees (RAFs) required by Rules 25-30.110 and 25-30.120, Florida Administrative Code, respectively. We have confirmed that the utility is current on annual reports and RAFs through 2001.

Pursuant to Rule 25-30.110(3), Florida Administrative Code, the obligation to file an annual report applies to any utility which is subject to our jurisdiction as of December 31, 2002. Dana will not be jurisdictional as of December 31, 2002, and will not have an obligation to file a 2002 annual report.

Pursuant to Rule 25-30.120(2), Florida Administrative Code, the obligation to remit RAFs applies to any year in which the utility is subject to our jurisdiction. Since Dana has been jurisdictional during 2002, it is appropriate for Dana to file the minimum annual RAFs of \$25 per service, \$50.00 total, for 2002, on or before March 31, 2003, as required by Rule 25-30.120(2)(a), Florida Administrative Code. The appropriate amount of RAFs for 2002 was received by this Commission effective November 25, 2002. Therefore, the utility has no further regulatory obligations.

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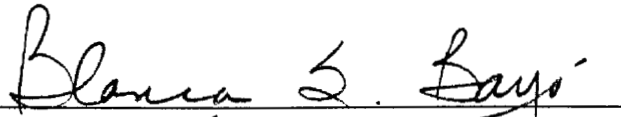
In summary, we approve Dana Utility Corporation's request to delete its entire service territory and cancel Certificates Nos. 614-W and 529-S without prejudice. The effective date of the cancellation of certificates shall be the date of our vote.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Dana Utility Corporation's Application for deletion of its entire territory as set forth in Attachment A and cancellation of its Certificates Nos. 614-W and 529-S without prejudice is hereby granted effective the date of this Commission's vote. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 12th day of December, 2002.



BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

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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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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 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,

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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.