

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Mrs.
Georgina Giallanza against
Florida Water Services
Corporation regarding non-
provision of service and
placement of utility facilities
in Lake County.

DOCKET NO. 020009-WU
ORDER NO. PSC-02-1848-FOF-WU
ISSUED: December 26, 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 DISMISSING COMPLAINT

BY THE COMMISSION:

BACKGROUND

Florida Water Services Corporation (FWSC or utility) is a
Class A utility which provides water and wastewater service
throughout Florida. By Order No. 20869, issued March 9, 1989, in
Docket No. 880605-WS, we approved the transfer of facilities and
amendment of Certificates 106-W and 120-S from West Volusia
Utilities, Inc. (West Volusia) to FWSC in Lake and Volusia County.
At issue in this docket is the system which serves the Holiday
Haven development in Lake County.

On February 20, 2001, Ms. Georgina Giallanza filed Complaint
No. 363306W with our Division of Consumer Affairs (CAF) against
FWSC, alleging that the utility's pipes transversed her property
without having first obtained an easement. Ms. Giallanza stated
that she had tried to contact the utility on several occasions and
was unable to get a response.

DOCUMENT NUMBER-DATE

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On February 21, 2001, CAF received a call from FWSC clarifying that Ms. Giallanza is a customer of Astor-Astor Park Water Association (Astor). Astor is a non-profit association whose exemption from our regulation pursuant to Section 367.022(7), Florida Statutes, was recognized by Order No. PSC-92-0978-FOF-WS, issued September 10, 1992, in Docket No. 920750-WS. Astor's service area abuts that of FWSC. CAF requested that FWSC forward information relevant to Ms. Giallanza's complaint to this Commission. On March 16, 2001, CAF received a final report with supporting documentation via e-mail from FWSC.

History

In preparation of purchasing the property in question, Ms. Giallanza initially contacted Astor with a request to provide service. Astor indicated that it would be another year before service would be available to the property. Ms. Giallanza required service within the month, and apparently contacted our staff regarding the matter. Our staff contacted FWSC asking whether the utility would consider expanding its territory to serve Ms. Giallanza. By letter dated October 2, 2000, FWSC had informed the then-owner, Ms. Bonita Brock, that because the subject property was outside its service territory, a release from Astor would be required and an amendment application would have to be filed with and approved by the Commission. FWSC requested that a letter be obtained from Astor stating that it would not object to a territory amendment. FWSC indicated to staff that Astor refused, and that FWSC thereafter informed Ms. Giallanza that the utility could proceed no further without Astor's release.

On October 10, 2000, Ms. Giallanza signed a contract for purchase of the subject property. By letter dated October 13, 2000, Astor agreed to provide water service to the property within 90 days. Astor called FWSC to mark the placement of its lines. On February 12, 2001, Ms. Giallanza contacted FWSC asking why the flags marking FWSC's lines indicated that the utility's water lines transversed her property. Representatives for FWSC indicated that the pipes were located on roads which were private right-of-ways known as Trespass Trail and Spillers Road, and that they would refer the matter to their legal department. After an investigation by its operations and legal department, FWSC concluded that it had a legal right to site its facilities on the road.

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At Commission staff's request, Ms. Giallanza provided additional information by letter dated April 10, 2001, which detailed the legal description of the property purchased, a title search Ms. Giallanza had performed with respect to any easements encumbering the property, and maps describing the location of her property and FWSC's service territory.

Our staff then contacted representatives of the utility and discussed the matters raised by Ms. Giallanza. By letter dated April 27, 2001, FWSC provided copies of plats, legal descriptions, and corporate warranty deeds and agreements which it believes demonstrates the utility's right to locate a portion of its lines on Spiller's Drive and Trespass Trail in the Holiday Haven area. FWSC contends that this documentation demonstrates that broad easement rights were conveyed to the predecessor utility by the developer to render service, and that the property owned by Ms. Giallanza is thus subject to the continuing rights granted to the predecessor utility for construction, ownership, maintenance, and installation of the utility facilities.

Upon review of this additional information, Ms. Giallanza remained concerned that the utility's lines created a trespass to her property. In an effort to resolve the matter informally, on July 18, 2001, a noticed meeting was held in Tallahassee, attended by Ms. Giallanza, the Office of Public Counsel (OPC), FWSC, and Commission staff. When no resolution was reached between the parties, staff offered its informal opinion that, given the information that had been provided, it did not appear that we had the jurisdiction to address Ms. Giallanza's concerns. After further discussion, our staff offered, and Ms. Giallanza requested, that the matter be brought before us for formal determination. To that end, our staff requested that Ms. Giallanza provide a specific list of issues and a description of the action she would like us to take with respect to her concerns.

By letter dated September 25, 2001, Ms. Giallanza filed a letter stating that FWSC refused to provide service to her property because she was outside the utility's territory. However, based on the maps and property descriptions provided, her property is in fact in FWSC's territory, and FWSC has improperly used her land for pipes to sell water to other customers. FWSC has water lines on her property which could have been used to provide service in a

more timely and cost-effective manner than that which actually occurred, and FWSC unfairly refused to provide service to Ms. Giallanza's property. She therefore requests that FWSC disconnect the pipes that are on her property at the property line and connect them instead to the lines that are on the utility's own property or where the utility has properly obtained an easement. Ms. Giallanza states that she is now receiving water from Astor, and wishes for FWSC to cease using her land to sell its water.

By letter dated October 31, 2001, FWSC responded to the two core issues raised in Ms. Giallanza's complaint: (1) why does FWSC have facilities on her property without appropriate right, and (2) why was water service not provided to Ms. Giallanza upon her request. FWSC contends that the issue of whether the utility has appropriate legal authority to site its facilities on Ms. Giallanza's property is not a matter within our jurisdiction. With respect to the second issue, FWSC states that its maps show that Ms. Giallanza's home site is outside of its certificated service territory, and that the adjacent utility company, Astor, would not consent to FWSC providing Ms. Giallanza service.

We originally considered staff's recommendation on this matter at the April 2, 2002 Agenda Conference. After discussion with the parties and our staff, we suggested and the parties agreed to attempt mediation of the dispute. Ms. Giallanza and representatives from OPC and FWSC attended mediation on April 25, 2002, at the Dade City City Hall, conducted by a certified staff mediator. Although representatives for Astor were contacted and invited to attend, Astor did not attend the mediation. The mediation concluded on April 25, 2002, without the parties having reached a written settlement, but with the understanding that FWSC and OPC would exchange additional information and continue to work towards settlement of the matter. On June 11, 2002, counsel for FWSC informed our staff that FWSC declined to pursue further settlement negotiations.

On June 26, 2002, staff filed a subsequent recommendation for our consideration. At the July 9, 2002 Agenda Conference, pursuant to the parties' request, the matter was again deferred to permit further negotiation towards settlement. On November 18, 2002, our staff counsel was informed that settlement of this matter had

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reached an impasse. The parties requested that the matter be scheduled for the next available Agenda Conference.

We have jurisdiction pursuant to Sections 367.011 and 367.111, Florida Statutes.

DISMISSING COMPLAINT

Failure to Provide Service upon Request

By Order No. 20869, issued March 9, 1989, in Docket No. 880605-WS, we approved the transfer of the Holiday Haven service area in Lake County from West Volusia Utilities, Inc. to FWSC. The utility purchases its water for the Holiday Haven customers in bulk from the Astor-Astor Park Water Association (AAPWA), a non-profit corporation that provides utility services to its members in an adjacent area of Lake County. FWSC states that its maps show that Ms. Giallanza's home site is outside of its certificated service territory, and that the AAPWA would not consent to FWSC providing Ms. Giallanza service.

As discussed in the case background, when Ms. Giallanza requested service from FWSC in her preparations to purchase property in Holiday Haven, FWSC responded that a release from Astor would be required and an amendment application would have to be filed with and approved by this Commission. FWSC indicated to our staff that Astor refused, and that FWSC thereafter informed Ms. Giallanza that the utility could proceed no further without Astor's release. Ms. Giallanza contends that FWSC's water lines on her property could have been used to provide service in a more timely and cost-effective manner than that which actually occurred, and that FWSC unfairly refused to provide service to her property.

A review of the maps and other information provided by Ms. Giallanza and FWSC indicates that the southern-most tip of Ms. Giallanza's property may be within FWSC's service area. However, the great majority of the property, including the site to which water would be provided, is located outside FWSC's service area.

Section 367.045, Florida Statutes, provides that a utility subject to our jurisdiction may not delete or extend its service area outside the area described in its certificate of authorization

until it has obtained an amended certificate of authorization from the Commission. Ms. Giallanza has correctly pointed out that past Commission dockets have recognized instances where FWSC has served outside its authorized territory. For example, by Order No. PSC-93-1150-FOF-WS, issued August 9, 1993, in Docket No. 930129-WU, FWSC's certificate was amended to include additional territory that it was already serving in the Holiday Haven, Lake County area.¹

We believe that it would contravene our statutory authority if we were to require FWSC to serve outside its certificated area without having first obtained approval pursuant to Section 367.045, Florida Statutes. Indeed, that would be a matter that would subject FWSC to our show cause authority pursuant to Section 367.161, Florida Statutes. The information provided to our staff indicates that Astor was unwilling to provide a release that it would not object to a territory amendment by FWSC, and that FWSC informed Ms. Giallanza that the utility could proceed no further without Astor's release.

Ms. Giallanza is currently receiving water service from Astor, and has expressed no dissatisfaction with that service. She has expressed no desire to be served by FWSC in the future, and as discussed previously, she is in fact requesting that FWSC remove its existing facilities from her property. In light of these circumstances, Ms. Giallanza's complaint does not state a basis regarding this issue upon which relief may be granted. We therefore dismiss that portion of Ms. Giallanza's complaint dealing with FWSC's refusal to provide service.

Unauthorized Presence of Water Lines

The other aspect of Ms. Giallanza's complaint deals with the presence of FWSC's water lines on her property. As discussed previously, Ms. Giallanza became aware of the presence of FWSC's

¹Order No. PSC-93-0202-FOF-WS, issued February 9, 1993, in Docket No. 921014-WS, approved FWSC's schedule for submitting amendment applications for 49 systems in 13 counties in which the utility was serving outside its territory. Pursuant to that Order, no separate show cause issue was identified in Docket No. 930129-WU.

water lines when they were marked in preparation for Astor serving the property. When Ms. Giallanza contacted FWSC asking why the flags marking FWSC's lines indicated that the utility's water lines were on her property, representatives for FWSC indicated that the pipes were located on roads that were private right-of-ways known as Trespass Trail and Spillers Road. Both Ms. Giallanza and FWSC's legal department conducted separate research with respect to the matter. Ms. Giallanza concluded that no legal right of way had been granted for the presence of FWSC's lines, and provided our staff documentation of a record search she had performed on the matter. FWSC provided copies of plats, legal descriptions, and corporate warranty deeds and agreements which it believes demonstrates the utility's right to locate a portion of its lines on Spiller's Drive and Trespass Trail in the Holiday Haven area.

FWSC's water distribution map shows the utility's existing Holiday Haven water distribution system. According to the map, a 4-inch PVC water line approximately 650 feet in length appears to run along the south side of Ms. Giallanza's property, and a 2-inch PVC water line, approximately 250 feet in length, runs about 50 feet away from the west side of Ms. Giallanza's property. The map does not actually show the water lines inside Ms. Giallanza's property, but according to both Ms. Giallanza and the utility, the water lines are sited on Ms. Giallanza's property along the roadways Trespass Trail and Spillers Road. The water lines do appear to be placed within FWSC's existing certificated area. We believe that a survey would be required to definitively determine whether or not Ms. Giallanza's property is within FWSC's service area.

There are issues of easement and property law in this case that are beyond the jurisdiction of this Commission. Ms. Giallanza argues that since there is no valid easement, FWSC is trespassing on her property and should remove the facilities without charge. FWSC contends that the information it has provided demonstrates that its facilities are legally located on a public right of way.

These arguments present issues of easement and property law, for which our authorizing statutes provide no adequate remedy at law. Such issues may be addressed by a court of competent jurisdiction, should the parties wish to pursue the matter. We

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therefore dismiss the portion of Ms. Giallanza's complaint concerning the presence of FWSC's facilities on her property.

Our decision in this matter is consistent with prior decisions (see Order No. PSC-93-1375-FOF-EI, issued September 20, 1993, in Docket No. 930789-EI and Order No. PSC-93-1382-FOF-EI, issued September 21, 1993, in Docket No. 930807-EI).

No further action is necessary and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the complaint does not state a basis upon which relief may be granted, and is therefore dismissed. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of December, 2002.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

JSB

Commissioner Palecki dissented in part and concurred in part:

Disputed issues of material fact exist over the boundary line. It appears from our discussion at the agenda conference that if we

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go to hearing, the evidence will show that Mrs. Giallanza was not entitled to service from Florida Water. Nonetheless, Mrs. Giallanza is entitled to an opportunity for a hearing. I would issue a PAA order denying Mrs. Giallanza relief, but affording her an opportunity to request a hearing if she so desires.

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.