

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Objection to Notice by TRADEWINDS UTILITIES, INC. of intent to amend its water and sewer certificates in Marion County.)))))	DOCKET NO. 881568-WS
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In re: Objection to Notice of intent of SUNSHINE UTILITIES, INC. to apply for Amendment of Certificate No. 363-W in Marion County.)))))	DOCKET NO. 881606-WU
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In re: Objection to Notice by TRADEWINDS UTILITIES, INC. of intent to amend its water and sewer certificates in Marion County.)))))	DOCKET NO. 890440-WS ORDER NO. 21172 ISSUED: 5-5-89

Pursuant to Notice, a Prehearing Conference was held on April 26, 1989, in Tallahassee, before Commissioner Thomas M. Beard, Prehearing Officer.

APPEARANCES: MICHAEL J. COOPER, Esquire, 321 Northwest 3rd Avenue, Ocala, Florida 32678
On behalf of Sunshine Utilities of Central Florida, Inc.

FLOYD R. SELF, Esquire, Messer, Vickers, Caparello, French & Madsen, P.A., Suite 701, First Florida Bank Building, Tallahassee, Florida 32302
On behalf of Tradewinds Utilities, Inc.

JAMES R. FRIER, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff

PRENTICE P. PRUITT, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850
Counsel to the Commission

PREHEARING ORDERI. BACKGROUND

On December 12, 1988, Sunshine Utilities, Inc. (Sunshine) of Ocala, Florida filed its objection to the notice by Tradewinds Utilities, Inc. (Tradewinds) of its intent to amend its water and sewer certificates in Marion County, Florida. Docket No. 881568-WS was established to process the objection. Subsequently, Sunshine filed its notice of intent to amend its water certificate in an area which overlapped the area previously noticed by Tradewinds.

On December 30, 1988, Tradewinds Utilities, Inc. filed its objection to the above-mentioned notice by Sunshine Utilities, Inc., alleging that: 1) Tradewinds had previously submitted an application for the amendment of its water and sewer

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certificates in an area which Sunshine's application overlaps; and, 2) Sunshine is serving an area within the disputed area known as Pearl Britain Estates without proper notification to the Commission or other utilities in the immediate area. Docket No. 881606-WU was established to process Tradewinds' objection.

In March, 1989, Tradewinds filed a notice of its intent to amend its water and sewer certificates to a separate parcel adjacent to the disputed area which was the subject of the above-discussed dockets. On March 23, 1989, Sunshine filed its objection to Tradewinds' notice alleging that since Sunshine was already serving five (5) subdivisions around the new area noticed by Tradewinds, the notice by Tradewinds was an infringement of Sunshine's service area. Docket No. 890440-WS was established to process Sunshine's objection.

Since the parties and issues were the same in all three dockets, the dockets will be disposed of in one simultaneous hearing.

II. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After opportunity for opposing parties to object and cross-examine, the document may be moved into the record. All other exhibits will be similarly identified and entered at the appropriate time during hearing.

Witnesses are reminded that on cross-examination responses to questions calling for a yes or no answer shall be answered yes or no first, after which the witness may explain the answer.

III. ORDER OF WITNESSES

DIRECT EXAMINATION

<u>Individual</u>	<u>Appearing For</u>	<u>Topic/Issues</u>
James Hodges	Sunshine	Sunshine's Experience/Expertise in water business; Sunshine's ability to serve disputed area; Sunshine's present water service area in relation to the disputed area

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<u>Individual</u>	<u>Appearing For</u>	<u>Topic/Issues</u>
Clyde Turner, P.E.	Sunshine	Mr. Turner's expert qualifications; His work previously performed for Sunshine; Ability of Sunshine to serve disputed area
Charles de Menzes (also filing supplemental direct)	Tradewinds	All issues

REBUTTAL

<u>Individual</u>	<u>Appearing For</u>	<u>Topic/Issues</u>
James Hodges	Sunshine	Response to Tradewinds' testimony regarding Sunshine's experience as a utility; Clarification of Sunshine's water facilities; Possibility of duplication of water facilities if Tradewinds is granted disputed territory.
Clyde Turner, P.E.	Sunshine	Provision of sewer service by Tradewinds in the disputed area
Charles de Menzes	Tradewinds	Response to direct testimony of Mr. Hodges and Mr. Turner and to clarify why Tradewinds should be granted authority to serve disputed territory.

IV. BASIC POSITIONS

SUNSHINE: It is Sunshine's position that Sunshine is providing service to at least six (6) subdivisions completely surrounding the affected area. Sunshine has an agreement with the owner of much of the affected area. Sunshine has the Department of Environmental Regulation's approval to provide service to much of the affected area. Sunshine has the facilities in place or with minimal effort can expand its existing facilities to meet the affected area. Sunshine has more competitive rates. All of these factors taken into account, Sunshine is best able on an economic and realistic basis to provide service to the affected area so that the consumer will have the best rates, the best service, consistent water pressure and the most efficient utilization of existing facilities.

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TRADEWINDS: Tradewinds' certificate should be amended to include the area noticed for water and sewer service by Tradewinds. This area, disputed with Sunshine Utilities (Sunshine) is only part of the area noticed by Sunshine for an extension. Tradewinds is the sole utility capable of providing the required water and sewer services to this area. Moreover, the developer of Pearl Britain Plaza (the Plaza), which lies within a portion of the disputed area, after evaluating the alternatives, independently has determined that only Tradewinds can meet the water and sewer service needs of the project. Finally, Sunshine should not be permitted to benefit from its three illegal extensions into parts of the areas noticed by Sunshine (two of which lie within the disputed areas), especially given Tradewinds' superior ability to serve in this disputed area. Accordingly, Sunshine's extension request to the disputed area and objections to Tradewinds' proposed extension should be rejected.

STAFF: No basic position at this time.

V. ISSUES AND POSITIONS

- 1. ISSUE: Are there any existing or proposed developer agreements involving either utility to provide water service in the disputed territory?

POSITIONS

SUNSHINE: Yes, Sunshine has entered into a developer agreement to provide service to certain areas within the dispute territory which areas are known generally as the Pearl Britain areas and are owned by a gentleman by the name of Baggerly. A copy of this has been attached to the prefiled testimony.

Apparently, Tradewinds has also proposed a developer agreement to service a shopping center. However, this agreement has not yet been accepted by Tradewinds.

TRADEWINDS: Tradewinds has an approved agreement with the developer of the Plaza that is executed by the developer. Tradewinds wants to sign the agreement but will not until the Commission has authorized Tradewinds to serve the Plaza. Tradewinds has no agreement encompassing the remaining disputed area.

Sunshine has admitted to executing developer agreements covering some or all of the three illegal extensions into the areas noticed by Sunshine and subject to these proceedings. These agreements do not encompass all of the disputed or noticed areas by Tradewinds or Sunshine.

STAFF: No position at this time.

- 2. ISSUE: Does either utility have existing transmission/distribution lines within the disputed territory? If so, how many customers are being served from these facilities?

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POSITIONS

SUNSHINE: Yes, Sunshine has provided some distribution lines within the disputed territory. This is specifically addressed in the prefiled testimony and maps thereof have been or will be submitted. There are no customers being served from these facilities.

TRADEWINDS: Tradewinds does not presently have any transition or distribution facilities within the disputed territory nor any customers. Sunshine has admitted to having some facilities within the disputed area due to the utility's unauthorized extensions; Sunshine is in the better position to identify the number of customers served by these extensions.

STAFF: No position at this time.

3. ISSUE: Does the territory in dispute require public or private fire protection? If so, can either utility provide the fire protection?

POSITIONS

SUNSHINE: Generally speaking, the territory in dispute does not require public or private fire protection except for a small portion of it wherein a shopping center is going to be located. That shopping center will require adequate water flow to provide fire protection. At this point neither utility can provide that fire protection without a significant change in its facilities. It is anticipated, however, that Sunshine can modify its facilities to provide the adequate water flow required.

TRADEWINDS: Service to the Plaza requires the ability to deliver 1000 gallons per minute continuously for two hours in order to meet the fire protection requirements for the shopping center. Tradewinds can provide the required service based upon the expansion plans under development for the Plaza. It is our understanding that Sunshine cannot provide the required service to the Plaza through any existing plants or facilities. There are no special fire requirements for the remainder of the disputed area.

STAFF: No position at this time.

4. ISSUE: What is required in capital improvements for each utility to provide water service to the disputed territory? How does each utility plan to fund these improvements (i.e. CIAC or utility investment)? How will such improvements effect present and future customers?

POSITIONS

SUNSHINE: For Sunshine to provide service to the disputed territory would require really no capital improvements other than the laying of distribution lines. The only exception is for the providing of adequate water flow to provide fire protection to the shopping center. To provide the water flow, Sunshine would have to increase the size of

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its wells in the Emil Mar Subdivision and/or Sunray Subdivision. Plans are currently being drawn to provide such modifications. The utility would fund these improvements by utility investment. The improvements will not effect or impact current or future customers based upon the anticipated needs and costs of Sunshine. The improvements should be able to be made without any significant disruption of water flow to current customers or any significant increase in price to future customers and all customers will continue to receive satisfactory water pressure.

TRADEWINDS: The agreement between Tradewinds and the Plaza's developer requires the developer to bear the expense of any expansion in plants or lines required for service to the Plaza; this construction will be undertaken by the developer and provided to Tradewinds as CIAC pursuant to the developer agreement. By this arrangement, there will not be any adverse consequences to Tradewinds' existing or future customers, and the rates applicable to all customers will be those currently tariffed by the Commission. These improvements will provide Tradewinds with the ability to simply add additional distribution lines for service to be provided to the disputed area between the Plaza and Tradewinds' current service area; this construction will not require any further plant expansions in order to provide service to this area.

Without Commission authorization, Sunshine through three separate unauthorized extensions, has installed some facilities in portions of the disputed area. It is Tradewinds' understanding that an extension of existing lines by Sunshine is insufficient to meet the service needs of the Plaza since the utility's currently available plants and facilities are incapable of meeting the Plaza's fire flow requirements. Tradewinds does not presently have a position on Sunshine's required improvements, capitalization, or customer impact to serve all of the disputed area.

STAFF: No position at this time.

5. ISSUE: Does Sunshine have the plant capacity and ability to provide water service to the territory in dispute?

POSITIONS

SUNSHINE: Sunshine has the existing plant capacity and ability to provide water service to the territory in dispute absent the need for water flow for fire protection to the shopping center. Modifications will be required to provide the water flow for fire protection but such plans are in preparation and should be no problem.

TRADEWINDS: Sunshine's current plant and facilities are incapable of meeting the service needs of the Plaza. Sunshine does have in place facilities that are currently providing service to some portions of the disputed area without prior Commission authorization.

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STAFF: No position at this time.

6. ISSUE: Does Tradewinds have the plant capacity and ability to provide water service to the territory in dispute?

POSITIONS

SUNSHINE: It is unknown whether Tradewinds has the sufficient plant capacity and ability to provide water service to the territory in dispute whether or not fire protection is required. It is known that if fire protection is required there will have to be some significant modifications to Tradewinds' existing facilities.

TRADEWINDS: Tradewinds does not currently have in place the plant and facilities necessary to provide service to the Plaza. However, by an expansion of existing facilities to be paid by and pursuant to an agreement with the developer of the Plaza, Tradewinds will have in place sufficient plant and facilities capable of ready extension to serve the disputed area between the Plaza and Tradewinds' current service area.

STAFF: No position at this time.

7. ISSUE: Should the objection filed in Docket no. 881568-WS by Sunshine to the notice of intent to Tradewinds to apply for amendment of Certificates 405-W and 342-S be upheld?

POSITIONS

SUNSHINE: Yes, the objection by Sunshine to the notice of intent of Tradewinds should be upheld in that Sunshine is better able to provide water service to the disputed territories.

TRADEWINDS: Sunshine's objections should be denied to the extent they conflict with Tradewinds' noticed extension.

STAFF: No position at this time.

8. ISSUE: Should the objection filed in Docket No. 890440-WS by Sunshine to the notice of intent of Tradewinds to apply for amendment of Certificates 405-W and 342-S be upheld?

POSITIONS

SUNSHINE: Yes, the objection by Sunshine to the notice of intent of Tradewinds should be upheld in that Sunshine is better able to provide water service to the disputed territories.

TRADEWINDS: Sunshine's objections should be denied to the extent they conflict with Tradewinds' noticed extension.

STAFF: No position at this time.

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9. ISSUE: Should the objection filed in Docket No. 881606-WU by Tradewinds to the notice of intent of Sunshine to apply for amendment of Certificate 363-W be upheld?

POSITIONS

SUNSHINE: No, the objection of Tradewinds to the notice of intent of Sunshine should not be upheld in that Sunshine is better able to provide service to the affected territories.

TRADEWINDS: Tradewinds' objections should be upheld and Tradewinds' notices of extension should be granted.

STAFF: No position at this time.

10. ISSUE: Should this docket be closed?

POSITIONS

SUNSHINE: Once Sunshine has been granted the right to expand its certificates into the disputed territories this docket should be closed.

TRADEWINDS: Yes, upon the conclusion of these proceedings, the dockets can be closed. However, depending upon the evidence produced in these dockets, it may be appropriate for the Commission to open a separate show cause proceeding on Sunshine's unauthorized expansions.

STAFF: No position at this time.

VI. STIPULATIONS

At the prehearing conference conducted on April 26, 1989, the parties and staff agreed as follows:

1. Sunshine's objections to Tradewinds' extension notices are limited solely to Tradewinds' provision of water service to the disputed area.
2. Any Request for Production of Documents shall be limited to information and/or data pertaining to the disputed area only.
3. The parties shall respond by May 5, 1989 to Tradewinds' Interrogatory No. 14, except that such responses shall address only formal complaints made against either utility within the past five (5) years.

VII. LIST OF EXHIBITS

<u>Witness</u>	<u>Proffered By</u>	<u>Exhibit No.</u>	<u>Description</u>
James H. Hodges and Clyde Turner, P.E.	Sunshine	Comp. 1	As-built drawings and subdivisions surrounding disputed area.

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<u>Witness</u>	<u>Proffered By</u>	<u>Exhibit No.</u>	<u>Description</u>
		Comp. 2	DER/PSC Utility Service Certificates of approval for existing subdivisions in disputed area.
		Comp. 3	Drawings and other demonstrative evidence showing existing facilities in disputed area.
		4	Sunshine's Agreement with Baggerly, owner of part of disputed area.
		Comp. 5	Engineer designs and drawings showing potential expansion needed or available to serve the disputed area.
		Comp. 6	Sunshine's current rate schedules.
		Comp. 7	Maps, plates, layouts of disputed area versus surrounding area.
Charles de Menzes	Tradewinds	8	CDEM-1 Detailed Parcel Map
		9	CDEM-2 DER Notice of Dry Line Permit
		10	CDEM-3 Plan for Service to Pearl Britain Estates

Staff did not prefile any testimony or exhibits, but reserves the right to introduce exhibits for the purpose of cross-examination.

Based upon the foregoing, it is

ORDERED by Commissioner Thomas M. Beard, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth below unless modified by the Commission.

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By ORDER of Commissioner Thomas M. Beard as Prehearing
Officer, this 5th day of MAY, 1989.


THOMAS M. BEARD, Commissioner
and Prehearing Officer

(S E A L)

JRF