

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of) DOCKET NO. 900612-WS
Certificates Nos. 444-W and 462-S to) ORDER NO. 24244
include additional territory in) ISSUED: 3/18/91
Charlotte County by GENERAL DEVELOPMENT)
UTILITIES, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON
MICHAEL MCK. WILSON

ORDER GRANTING MOTION TO DISMISS OBJECTION,
GRANTING AMENDMENT OF CERTIFICATE,
AND CLOSING DOCKET

BY THE COMMISSION:

General Development Utilities, Inc. (GDU) is a Class A utility. It provides service to approximately 33,300 water customers and approximately 15,200 wastewater customers in its West Coast Division. GDU's West Coast Division was issued Certificate No. 444-W in Desoto County in 1985, when the system obtained its original certificate. The rest of the West Coast Division (Charlotte and Sarasota Counties) became subject to jurisdiction effective October 1, 1989, by virtue of the enactment of Section 367.171(7), Florida Statutes.

GDU filed an application on July 5, 1990 to amend its Certificates Nos. 444-W and 462-S in Charlotte County to include an area to serve additional area that will eventually consist of 1,870 residential and 932 commercial customers.

El Jobean Water Association, Inc. (El Jobean), a homeowners association, receives potable water service from GDU under a bulk service agreement and resells that water to its service territory. El Jobean does not serve in the disputed area. El Jobean timely filed an objection on August 2, 1990. A consent agreement between GDU and the Florida Department of Environmental Regulation (DER) (#90-0548) was attached as an exhibit to the objection.

El Jobean alleges in its objection that El Jobean purchases potable water from GDU in an amount sufficient to provide service to existing and planned development in El Jobean's service area. El Jobean alleges that GDU is contractually obligated to supply El Jobean with water for resale to a development called Viscaya Lakes

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Mobile Home Park. The objection alleges that DER authorized construction of water lines needed to serve the mobile home park. It is alleged that GDU and DER entered into a consent agreement that requires GDU to correct certain deficiencies in the proper treatment of water in GDU's water system. The objection alleges that: "El Jobean's representatives have been in contact with representatives of DER and have been informed that under DER's interpretation of the consent agreement with GDU, GDU is not presently in compliance. As such El Jobean cannot begin providing service to Viscaya Lakes with the water provided by GDU at this time." "Presently" and "at this time" refer to August 2, 1990, the date of El Jobean's objection. The objection also alleges that Section 364.045(2)(b), Florida Statutes, requires that GDU was required to submit to the Commission a statement that GDU has "technical and financial ability to render reasonably sufficient, adequate and efficient . . . service in the area." El Jobean alleges GDU's application does not contain such a statement. El Jobean's objection then concludes, based on its preceding allegations, that GDU is not technically able to render sufficient or adequate service to its existing customers, much less those in the proposed extension, until such time as GDU is in full compliance with the consent agreement and is providing water which meets all state standards. El Jobean requests that the Commission deny GDU's request to amend the certificates.

MOTION TO DISMISS

GDU's Motion to Dismiss alleges that El Jobean has failed to allege that El Jobean has standing pursuant to Section 367.045(4), Florida Statutes, stating that El Jobean's objection does not allege that it will be "substantially affected" by GDU's requested extension. GDU asserts that El Jobean's objection does not allege that the addition of the requested additional service area will cause El Jobean to suffer any injury in fact. Finally, GDU's motion to dismiss alleges that DER has primary jurisdiction over the issues raised in El Jobean's objection, including the subject secondary water quality standards.

All factual allegations in El Jobean's objection are taken as true for the purposes of this Order. El Jobean filed a timely response to GDU's Motion to Dismiss and therein alleges that the Commission does not require objectors to adhere to technical rules of pleading and that the objection shows that El Jobean has standing because the objection alleges injury per se as a result of receiving substandard water from GDU. While it is true that the Commission does not require objectors to adhere to technical rules of pleading, Section 367.045(4), Florida Statutes, requires that a

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written objection from a customer to a utility's amendment request must allege that the customer will be "substantially affected" by the requested amendment. Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478, 481 (Fla. 2d DCA 1981), requires that before a person or entity can be considered to be substantially affected by agency action in an administrative proceeding, the person or entity must allege in its objection (1) that the agency action will cause the objector to suffer injury in fact of sufficient immediacy to be entitled to a hearing pursuant to Section 120.57, Florida Statutes, and (2) the injury is of a type or nature which the particular proceeding is designed to protect.

After a careful and detailed review of its allegations, we find that El Jobean's objection taken in its entirety does not allege sufficient facts that, if taken as true, would show that El Jobean will suffer any injury in fact, immediate or otherwise, if the Commission authorizes GDU to serve the requested additional service territory. The objection does not allege facts, which if taken as true, show any nexus between the additional service and the quality of water served by GDU to El Jobean. Therefore, we find that El Jobean's objection fails to meet the first prong of the two pronged test of Agrico Chemical Company. Accordingly, the objection does not show that El Jobean will be substantially affected if GDU serves the additional service area. Therefore, we grant GDU's motion to dismiss and dismiss El Jobean's objection.

We are aware that Docket No. 900211-WS was opened to address a complaint filed by El Jobean against GDU. In that complaint, El Jobean has raised the same concerns regarding quality of service as expressed in its objection to this application. We believe that the concerns raised by El Jobean are more appropriately addressed in the complaint docket. Because the complaint docket affords El Jobean with a forum where its concerns can be addressed, and because an amended objection could operate as an injunction to the requested utility service and thereby unduly prejudice GDU and the individuals and entities that need and desire the requested service, in addition to the fact that an allowance of an amendment would be statutorily inappropriate, the dismissal is with prejudice.

AMENDMENT OF CERTIFICATE

As previously stated, on July 5, 1990, General Development Utilities, Inc. filed its application for amendment of water and wastewater certificates to include additional territory in Charlotte County. The application is in compliance with the

governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for an amendment. In particular, the notarized application contains:

- 1) A check in the amount of \$1,800 which upon calculation, equates to the correct filing fee as prescribed by Rule 25-30.020, Florida Administrative Code.
- 2) Adequate service territory and system depiction maps and a territory description, as prescribed by Rule 25-30.035(3)(h), Florida Administrative Code. The territory description is appended to this Order as Attachment A.
- 3) Evidence that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.035(3)(f), Florida Administrative Code.
- 4) Proof of notice of application to all interested governmental/regulatory agencies, and all utilities within a four-mile radius of the territory, and proof of advertisement in a newspaper of general circulation in the county, as prescribed by Rule 25-30.030, Florida Administrative Code.

Also, the utility has demonstrated its financial ability to provide reliable service to its customers. Pursuant to Section 367.111, Florida Statutes, the Commission has concurrent jurisdiction with DER regarding enforcement of water quality standards. DER has primary jurisdiction over those environmental standards, which are DER rules published in Chapter 17, Florida Administrative Code. There is nothing unique regarding the Commission's jurisdiction. According to the consent agreement entered into between DER and GDU, high sulfates and excess total dissolved solids (TDS) have been a recurring problem from GDU's Northport water plant, in violation of DER's secondary water standards, which are not health-related. GDU is in compliance with the Consent Agreement. The current agreement shows that DER is aware of GDU's intermittent failure to always meet the secondary standards at the Northport plant and is issuing GDU construction permits to add new customers. The consent agreement acknowledges that GDU's failure to meet secondary standards regarding excess

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sulfates and TDS's has been exacerbated by drought conditions during 1989 and 1990. The agreement requires that GDU must complete a study and make plant improvements that will bring it into compliance. Also GDU must submit Milestone reports to DER.

We find that the consent agreement between GDU and DER and the granting of construction permits to add new customers by DER show that the public interest regarding the secondary standards is being protected by DER.

We are aware that there is an immediate need for service to the customers in the requested territory. We find the utility is acting in the public interest in responding to the request for service by filing the instant application for amendment.

Based on the above, we conclude it is in public interest to grant the application of General Development Utilities, Inc. for amendment of Certificates Nos. 444-W and 462-S for the area set forth in Attachment A to this Order. GDU should return the certificates for entry reflecting the additional territory within thirty days of the date of this Order. Revised tariff sheets should be filed reflecting the additional territory within thirty days of the date of the order.

RATES AND CHARGES

In accordance with Rule 25-9.004, Florida Administrative Code, the present rates and charges approved for GDU's West Coast Division shall be applicable to customers within the territory granted herein.

No further action is required by the Commission in this docket and it shall be closed.

It is, therefore

ORDERED by the Florida Public Service Commission that the motion to dismiss the objection of El Jobean Water Association, Inc. filed by General Development Utilities, Inc. is granted and the objection is hereby dismissed with prejudice. It is further

ORDERED that Certificates Nos. 444-W and 462-S held by General Development Utilities, Inc. are hereby amended to include the territory described in Appendix A to this Order which by reference is incorporated herein. The utility is directed to return said certificates to this Commission within 30 days of the date of this Order for appropriate entry. It is further


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ORDERED that the utility shall submit revised tariff sheets reflecting the additional territory within 30 days of the date of this Order. It is further

ORDERED that the customers in the added area shall be charged the same water and wastewater rates and charges approved in the utility's tariffs. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 18th
day of MARCH, 1991.



STEVE TRIBBLE, 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 120.59(4), 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 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 or sewer 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.

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ATTACHMENT A

GENERAL DEVELOPMENT UTILITIES, INC.

WEST COAST DIVISION

WATER - TERRITORY TO BE SERVED

Township 40 South, Range 22 East

Section 28

The West Half of Section 28.

Section 29

All of Section 29 excluding areas previously certificated.

Section 32

All of Section 32 excluding areas previously certificated.

Township 40 South, Range 21 East

Section 14

All of Section 14 excluding areas previously certificated.

Section 15

All of Section 15.

Section 22

The Northeast 1/4 of Section 22.

Section 23

All of Section 23 excluding areas previously certificated.

Section 24

That portion of Tract I located in Section 24.

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Township 40 South, Range 21 East

Section 25

All of Section 25 excluding areas previously certificated.

Section 26

All of Section 26 excluding areas previously certificated.

Section 36

All of Section 36

SEWER - TERRITORY TO BE SERVED

Township 40 South, Range 22 East

Section 28

The West Half of Section 28.

Section 29

The East half of Section 29 excluding areas previously certificated.

Section 32

All of Section 32 excluding areas previously certificated.

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Township 40 South, Range 21 East

Section 14

All of Section 14 excluding areas previously certificated.

Section 15

All of Section 15.

Section 22

The Northeast 1/4 of Section 22.

Section 23

All of Section 23 excluding areas previously certificated.

Section 24

That portion of Tract I located in Section 24.

Section 25

All of Section 25 excluding areas previously certificated.

Section 26

All of Section 26 excluding areas previously certificated.

Section 36

All of Section 36.