

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 940303-WS
amendment of Certificates Nos.) ORDER NO. PSC-96-0066-FOF-WS
533-W and 464-S to add territory) ISSUED: January 16, 1996
in Lake and Orange Counties by)
SOUTHLAKE UTILITIES, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER GRANTING OPPOSITION TO CERTIFICATE
AMENDMENT APPLICATION AND REQUEST FOR ADMINISTRATIVE
HEARING, DECLARING ORDER NO. PSC-94-1508-FOF-WS VOID,
AND SETTING DOCKET FOR HEARING

BY THE COMMISSION:

On April 25, 1994, Southlake Utilities, Inc. (Southlake or Utility) filed an application with this Commission requesting amendment of Certificates Nos. 533-W and 464-S to include additional territory in Lake and Orange Counties. By Final Order No. PSC-94-1508-FOF-WS, issued December 8, 1994, the Commission approved Southlake's application requesting the additional territory.

On January 9, 1995, the Orange County Board of Commissioners (the Board or County) filed with this Commission an Opposition to Certificate Amendment Application, Request for Administrative Hearing, and Petition to Modify Order No. PSC-94-1508-FOF-WS (Pleading). On January 23, 1995, Southlake filed with this Commission a response to the Board's pleading. Upon receipt of the Board's pleading, we were informed that the parties were attempting to reach a settlement on the disputed issues, which would have resulted in the Board withdrawing their pleading. However, the parties did not settle.

Pursuant to Section 367.045(2)(a), Florida Statutes, Southlake was required to provide notice to the Board of its application to extend its service territory. The Board asserts that the notice was delivered to a defective address, that the County never

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received notice, and that the County was unaware of Southlake's application until it received Order No. PSC-94-1508-FOF-WS (the Order), which approved the territory extension. By its pleading, the Board opposes the territory extension as it related to territory within Orange County. The Board objects on the basis that the territory extension approved in the Order violates the County's comprehensive plan. Further, in its pleading, the Board requests that we hold a hearing to consider its objection, and that the Order be modified to acknowledge the Board's written opposition and request for hearing. Southlake filed a response to the Board's pleading on January 23, 1995, in which they requested that we dismiss the Board's opposition to the Order, and deny the County's request for hearing and modification of the Order.

Because we believe that the notice was mailed to an incorrect address, and therefore, the Board did not receive it, we find that adequate notice was not given to the Board. Accordingly, Order No. PSC-94-1508-FOF-WS was issued without the County having an opportunity to object to the amendment application, and therefore, was issued in error. Although we recognize that Section 367.045(5)(b), Florida Statutes, states that the Commission is not bound by the local comprehensive plan of the county or municipality, we believe that the County is entitled to present its case regarding how Southlake's amendment violates the County's comprehensive plan. Accordingly, we find it appropriate to grant the Board's pleading and set this docket for hearing.

Based on the foregoing, it is

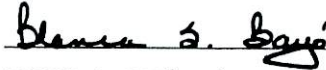
ORDERED by the Florida Public Service Commission that the Orange County Board of Commissioners' Opposition to Certificate Amendment Application and Request for Administrative Hearing is hereby granted. It is further

ORDERED that Order No. PSC-94-1508-FOF-WS, due to the deficiencies noted in the body of this Order, was issued in error and shall hereby be considered void. It is further

ORDERED that this docket shall remain open and be set for an administrative hearing pursuant to Section 120.57, Florida Statutes.

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DOCKET NO. 940303-WS
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By ORDER of the Florida Public Service Commission, this 16th
day of January, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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Commissioner Kiesling dissented.

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, 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.