

ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for certificate
to operate a water and wastewater
utility in Polk County by Garden
Grove Water Company, Inc.)
)
)
)

Docket No. 961299-WS
Filed: December 11, 1996

**CITY OF LAKE WALES'
PETITION FOR LEAVE TO INTERVENE**

The City of Lake Wales ("Lake Wales"), pursuant to Rules 25-22.036(7) and 25-22.039, Florida Administrative Code, hereby petitions the Florida Public Service Commission (the "Commission") for leave to intervene in this proceeding in support of Emmer Development Corp.'s Petition for Leave to Intervene, Request for Proposed Agency Action Procedures and Response to Garden Grove Water Company's Application for a Grandfather Certificate. In support of its Petition, Lake Wales states:

Intervenor Information

1. Lake Wales is a political subdivision of the State of Florida. Lake Wales' address is:

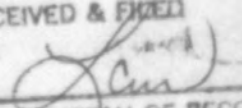
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- LIN 5
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

City of Lake Wales
P.O. Box 1320
Lake Wales, FL 33859-1320

1. Copies of pleadings, notices and other documents should

be served on:

Albert C. Galloway, Jr.
City Attorney
City of Lake Wales
P.O. Box 1260
Lake Wales, FL 33859-1260

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
13193 DEC 11 96
FPSC-RECORDS/REPORTING

Statement of Ultimate Facts

2. *Emmer owns approximately 313 acres on Thompson Nursery Road in Section 18 and 19 of Township 29 South, Range 27 East, Polk County, Florida (the "Emmer Property"). Emmer plans to develop a mixed-use subdivision on the Emmer Property including 592 single-family residences, a 300 unit apartment complex, privately maintained roads, and supporting neighborhood commercial development.*

3. *The City of Lake Wales ("Lake Wales") is fully capable of providing, and desires to provide, water and wastewater service to the Emmer Property. However, Garden Grove Water Company, Inc. ("Garden Grove") has requested that the Commission certificate it to serve the Emmer Property.*

4. *Garden Grove has never provided water or wastewater service to the Emmer Property, nor has it extended its facilities to serve the Emmer Property.*

5. *Garden Grove's facilities are not even in the remote vicinity of the Emmer Property. Lake Wales' water and wastewater facilities are within close proximity to the Emmer Property.*

6. *On May 14, 1996 the Board of County Commissioners of Polk County adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring that water and wastewater utilities in Polk County are subject to the Commission's jurisdiction under Chapter 367, Florida Statutes. The Commission acknowledged the transfer of jurisdiction effective May 14, 1996, by order issued July 11, 1996. In Re: Resolution of Board of Commissioners of Polk County declaring Polk County subject to provisions of Chapter 367, F.S., 96 F.P.S.C. 7:311, 312, Docket No. 960674-WS, Order No. PSC-96-0896-FOF-WS (July 11, 1996).*

7. On October 29, 1996, Garden Grove filed its Application with the Commission.¹ Garden Grove's Application describes the territory to be served to include the Emmer Property.

8. Water and wastewater service to the Emmer Property by Lake Wales would be more efficient than service by Garden Grove because Lake Wales' facilities are closer to the Emmer Property. Additionally, Lake Wales can provide the Emmer Property with better service at a significantly lower cost.

Substantial Interest Affected

9. Lake Wales is substantially affected by these proceedings and, thus, is entitled to participate as a party in this docket. Lake Wales' substantial interest is affected by this docket because if the Commission certifies Garden Grove to serve the Emmer Property, Lake Wales will not be able to serve the Emmer Property.

10. Garden Grove has not followed the appropriate procedures for grandfather certification and is not entitled to a grandfather certificate that includes the Emmer Property. Section 367.171(2), Florida Statutes (Supp. 1996), makes it clear that the Commission does not have the statutory authority to grant a utility's request for a grandfather certificate that includes territory in excess of the actual territory being served on the date the Commission acquired jurisdiction. In re: Application for Amendment of Certificates Nos. 298-W and 248-S in Lake County by JJ's Mobile Homes, Inc.; In re: Investigation into provision of water and wastewater service by JJ's Mobile Homes, Inc. to its certificated territory in Lake County, 95 F.P.S.C. 10:480, 498, Docket No. 940264-WS, Order No. PSC-95-1319-FOF-WS (Oct. 30, 1995) ("[T]he Commission, or in this case the staff, did not have the statutory authority to grant a grandfather certificate which authorized the utility to serve more than the actual territory being served at the jurisdictional date.")

¹ The Application was filed after the 90 day deadline for filing an application for a grandfather certificate required by Section 367.171(2), Florida Statutes, and Order No. PSC-96-0896-FOF-WS.

Because Garden Grove was not serving the Emmer Property on the date that jurisdiction over Polk County water and wastewater utilities was transferred to the Commission, it would be beyond the Commission's statutory authority to use the grandfather procedures to award Garden Grove the right to serve the Emmer Property. Thus, the Commission must address Garden Grove's request for certification to serve the Emmer Property under the Commission's original certification procedures in Section 367.045, Florida Statutes. Subsection (4) of Section 367.045 recognizes the right of a governmental authority and utility, such as Lake Wales, to participate as a party to original certification proceedings.

11. Even in the event that the Commission treats this docket as a grandfather certification proceeding, intervention by a party such as Lake Wales is also appropriate and consistent with Commission precedent. See In re: Application for Certificate to Provide Wastewater Service in Okaloosa County Under Grandfather Rights by EASTDESTIN WATER SERVICE, 93 F.P.S.C. 11:75, Docket No. 930773-SU, Order No. PSC-93-1610-PCO-SU (Nov. 3, 1993) (granting intervention in grandfather proceeding); In re: Initiation of show cause proceedings against, and investigation into possible overearnings by SEBRING COUNTY ESTATES WATER COMPANY in Highlands County, 88 F.P.S.C. 6:122, Docket No. 871308-WU, Order No. 19443 (June 6, 1988) (granting intervention to challenge application for grandfather certificate).

Disputed Issues of Material Fact

12. Lake Wales is aware of the following disputed issues of material fact at this time:

- (a) whether Garden Grove's Allowance for Funds Prudently Invested is reasonable and prudent;
- (b) whether Garden Grove's Equivalent Residential Connection charges are reasonable and prudent;

- (c) whether Garden Grove's service connection charges are reasonable and prudent;
- (d) whether Garden Grove's rates are properly structured and not discriminatory;
- (e) whether the cost of Garden Grove providing service to the Emmer Property is reasonable;
- (f) whether service by Lake Wales to the Emmer Property is economical and feasible; and
- (g) whether Garden Grove can provide quality service to the Emmer Property.

13. Lake Wales is also aware of disputed mixed issues of fact and law, which include, but are not limited to, the following:

- (a) whether Garden Grove has complied with the procedures in Section 367.171, Florida Statutes, for obtaining a grandfather certificate;
- (b) whether Garden Grove is entitled to a grandfather certificate that includes the Emmer Property because Garden Grove was not serving the Emmer Property when jurisdiction was transferred to the Commission;
- (c) whether Garden Grove is entitled to an original certificate to serve the Emmer Property when its cost to serve substantially exceeds that of Lake Wales' cost to serve;
- (d) whether Garden Grove was a party to affiliated transactions that were unlawful, unreasonable or imprudent; and
- (e) whether it is in the public interest for Lake Wales, and not Garden Grove, to serve the Emmer Property.

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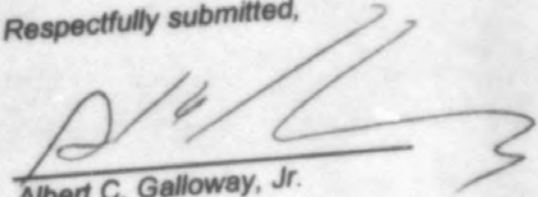
Basic Position

14. Lake Wales' basic position is that Garden Grove is not entitled to a grandfather certificate or an original certificate to serve the Emmer Property. Garden Grove is not entitled to a grandfather certificate under Section 367.171, Florida Statutes, because it did not file its Application for a Grandfather Certificate within 90 days of the date that jurisdiction was transferred to the Commission and because Garden Grove was not serving the Emmer Property when jurisdiction was transferred to the Commission. Additionally, Garden Grove is not entitled to an original certificate to serve the Emmer Property because Lake Wales can provide better, more efficient service to the Emmer Property at a lower cost, and therefore, service by Garden Grove would not be in the public interest. Lake Wales supports and adopts the arguments of Emmer in response to Garden Grove's Application.

WHEREFORE, Lake Wales respectfully requests that the Commission:

- (a) grant Lake Wales full party status in this proceeding; and
- (d) grant such other relief as the Commission deems appropriate.

Respectfully submitted,

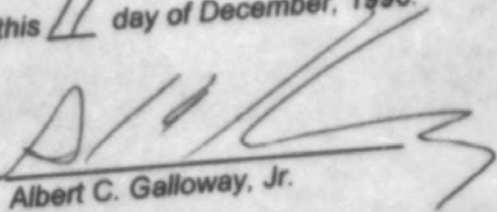


Albert C. Galloway, Jr.
City Attorney
Florida Bar No. 475602
City of Lake Wales
225 E. Park Avenue
Lake Wales, FL 33853
(941) 676-1423

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FOUR STAR BOND
SOUTHWORTH CO. U.S.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by Hand Delivery to Kathleen Johnson, Staff Counsel, Florida Public Service Commission 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 and Wayne Schiefelbein, Gatlin Woods & Carlson, 1709-D Mahan Drive, Tallahassee, Florida 32308 this 11 day of December, 1996.


Albert C. Galloway, Jr.

TAL-97226