

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for )  
certificates to operate a water )  
and wastewater utility in )  
Charlotte and DeSoto Counties )  
by Lake Suzy Utilities, Inc. )  
\_\_\_\_\_ )

DOCKET NO. 970657-WS

LAKE SUZY UTILITIES, INC.'S RESPONSE TO  
OBJECTION OF FLORIDA WATER SERVICES  
CORPORATION AND FLORIDA WATER SERVICES  
CORPORATION'S PETITION TO INTERVENE

LAKE SUZY UTILITIES, INC. ("LSU"), by and through its undersigned attorneys and pursuant to Rule 25-22.037, Florida Administrative Code, files this Response to the Objection of Florida Water Services Corporation ("FWSC") to Application(s) For Territory Amendment & Original Certificates by Lake Suzy Utilities, Inc. and Petition of Florida Water Services Corporation For Leave to Intervene.

Any question regarding the timeliness of this Response is readily answered by a review of the authority relied upon by FWSC in its pleading. FWSC states that its pleading is filed pursuant to Rules 25-22.036 and 25-22.039, Florida Administrative Code.

ACK \_\_\_\_\_  
AFA \_\_\_\_\_ Pursuant to Rule 25-22.036, F.A.C., the pleading filed by FWSC must  
APP \_\_\_\_\_ be either an application, petition, complaint, or orders and  
CAF \_\_\_\_\_ notices. FWSC's pleading clearly falls within the definition of  
CMU \_\_\_\_\_  
CTR \_\_\_\_\_ petition. Pursuant to Rule 25-22.036(4)(b), F.A.C., a petition is  
EAG \_\_\_\_\_ appropriate when a substantially affected person seeks some  
LEG \_\_\_\_\_  
LIN \_\_\_\_\_ Commission action not otherwise specified in the Rules. There is  
OPC \_\_\_\_\_ no other rule which provides for initiating a formal proceeding by  
RCH \_\_\_\_\_ anything but a Petition. The authority FWSC relies upon for its

SEC \_\_\_\_\_  
WAS *Redeman*  
CTH \_\_\_\_\_  
RECEIVED & FILED  
FPSC-BUREAU OF RECORDS

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FPSC-RECORDS/REPORTING

leave to intervene is Rule 25-22.039, F.A.C., which specifically refers to the initial pleading as a Petition. Thus LSU has until at least March 25, 1998 within which to respond to FWSC's Petitions and probably until March 30, 1998, since overnight mail is still considered mailing and not personnel service. Rule 25-22.028(4) F.A.C.

1. The only portion of the territory sought to be certificated by LSU to which Florida Water Services Corporation ("FWSC") objects is that portion located in Charlotte County consisting of 49 lots in a portion of the Links subdivision.

2. LSU has entered into a Water and Sewer Territory Expansion Agreement with Haus Development which owns 41 of the 49 lots in the Links Subdivision. It should be noted that Haus Development, as well as Charlotte County, have filed objections in FWSC's docket pending before this Commission to add those lots to its service area. See Docket No. 980261.

3. The initial and fatal deficiency in FWSC's Objection is that it is untimely. That fact is candidly admitted by FWSC, which then attempts the alternate relief of seeking to obtain full party status through intervention. There is no precedence for allowing a party which failed to file a timely protest to nonetheless obtain full party status through intervention.

4. The Affidavit of Charles Sweat does not create a factual issue as to whether LSU gave the required notices. In fact, not only did LSU serve notices by mail as attested to in the Affidavits filed with the Application, but representatives of the two

utilities meet on one occasion and had telephone conferences on two occasions. See Affidavit of Mr. Shepard attached hereto as Exhibit "A". FWSC, in paragraph 5 of its Objection, alludes to these meetings and telephone conferences.

5. The PSC itself faced a situation similar to this in 1985. In that case, the City of Jacksonville filed an untimely petition for relief from an Order of the PSC with Affidavits stating that neither the assistant counsel for the City, nor other members of the City staff who had participated in the hearing had received a copy of the Order. The PSC Clerk's records showed that a copy of the Order would have been sent to the City Attorney's office upon issuance. The address in the PSC records was to the City Attorney instead of the Assistant City Attorney who actually participated in the hearing, but the address was the same. Obviously concluding that appropriate notice was given although it may not have been received, the PSC denied the City's relief. *In re: Application of St. Johns Bluff Utility Company for original sewer certificate, Order No. 15208, (10/8/95).*

6. That same set of facts exists in this case leading to the same conclusion. The name and address for FWSC on the PSC's List of Water and Wastewater Utilities in Charlotte County is Brian Armstrong, as manager, with a post office box address in Orlando. While the notice was not addressed to Mr. Sweat, the post office box is the same one used by FWSC's attorneys in their pleadings and thus must be presumed to be correct. Further, not even FWSC contests the fact that notice was also effectuated by the require-

ment of publication. In other words, FWSC had constructive notice through newspaper publications. *Osceola Service Company v. Bevis*, 289 So.2d 712 (Fla. 1974); *In re: Application of East Central Florida Services, Inc. for an original certificate*, Order No. PSC-92-0104-FOF-SU (3/12/92).

7. FWSC's comments regarding the Application filed by LSU not being signed by an attorney or a class B practitioner is a smoke screen which FWSC should be embarrassed to raise. LSU does not believe that the PSC intended in adopting the forms for use in filing for an original certificate that only an attorney or class B practitioner was qualified to fill it out.

8. The Staff Recommendation in this case is due in a little over one month and to allow FWSC's untimely objection would be to unduly delay this proceeding. FWSC's objection is an attempt to bully LSU into withdrawing its application. Obviously, FWSC's financial resources to delay the PSC's action on LSU's application are greater than those of LSU. The filing of discovery by FWSC shows its intent to litigate this matter to the fullest extent possible as a means to harass LSU.

9. FWSC's attempt to intervene in this proceeding is equally inappropriate. While some PSC decisions do give the PSC authority to grant intervention as an interested party, such intervention does not grant FWSC objector status such that it would have the right to demand a hearing or to utilize the discovery process that it seeks to employ. *In re: Objection to Notice of Joint Application to Transfer Water and Sewer Certificates in St.*

*Johns County from St. Johns North Utility Corporation to Jacksonville Suburban Utilities Corporation, Order No. 22342 (12/26/89); In re: Application for Amendment of Certificate No. 427-W to Add Territory in Marion County by Windstream Utilities Company, Order No. PSC-97-0470-WU (4/23/97).*

10. Thus, even if FWSC is allowed to intervene, its request for a hearing must be denied. Its demand to have full rights as a party must also be denied. To allow FWSC full rights of a party through intervention allows it to circumvent the intent of the 30 day protest period. The precedent which would be set would negate the necessity for the 30 day protest period since anyone objecting within the initial 30 day notice period must show that it is substantially affected just like a party seeking intervention. To accept FWSC's argument would destroy the procedure which has worked effectively for many years.

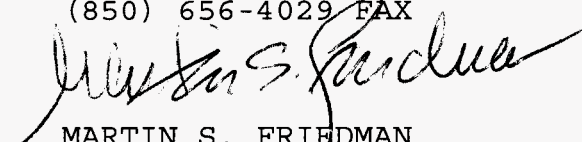
11. The disputed issues of material fact and ultimate facts alleged by FWSC in paragraphs 10 and 11 of its Objection shows FWSC's clear intent to attempt to use this proceeding as a forum to make its argument why the disputed territory should be included in its service area. The PSC procedure for considering original certificates is not a competitive process. Each application must stand on its own merit with the PSC considering them in the order in which they are filed. The sole purpose for FWSC attempts to intervene in this case is an attempt to delay it while FWSC proceeds with its just recently filed application for the same territory. See Docket No. 980261. That application has drawn

timely objections from Charlotte County, Haus Development, Inc., the owner of 41 of the 49 lots in question, and LSU.

WHEREFORE, LSU requests the PSC issue an Order (1) denying FWSC's untimely objection, and (2) denying its request for intervention with full party status.

Respectfully submitted this 20th day of March, 1998, by:

ROSE, SUNDSTROM & BENTLEY, LLP  
2548 Blairstone Pines Drive  
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(850) 877-6555  
(850) 656-4029 FAX



MARTIN S. FRIEDMAN  
FL Bar ID No. 0199060  
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing has been furnished by U.S. Mail to Matthew J. Feil, Esquire, Florida Water Services Corporation, P.O. Box 609520, Orlando, Florida 32860-9520 and by hand delivery to Bobbie Reyes, Esquire, Florida Public Service Commission, Legal Division, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 this 20th day of March, 1998.



MARTIN S. FRIEDMAN

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STATE OF FLORIDA       )  
COUNTY OF DESOTO     )

EXHIBIT "A"

AFFIDAVIT

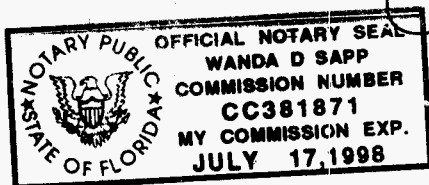
I, Dallas A. Shepard, President of Lake Suzy Utilities, Inc. of my personal knowledge do solemnly swear or affirm the following:

1. I personally on behalf of Lake Suzy Utilities, Inc. did mail or caused to be mailed the NOTICE OF APPLICATION FOR ORIGINAL CERTIFICATE to Brian P. Armstrong, Florida Water Services Corporation, PO Box 609520 Orlando, Florida 32960-9520 on September 26, 1997. Lake Suzy mailed the Notices to the addresses and persons as received from the Public Service Commission list. This list, that I received from the Florida Public Service Commission, can be found as Exhibit P.1 in the Application for Original Certificate for a Utility in Existence and Charging Rates (Docket No. 970657-WS).
2. Mr. Tom Henly, an employee of Florida Water Services Corporation (Maintenance Foreman of the Deep Creek Utility System), visited my Lake Suzy office and requested clarification on the Notice that Florida Water Services Corporation had received in relation to the Application for Amendment of Territory filed by Lake Suzy on June 3, 1997. I personally reviewed with Mr. Henly an aerial photograph that I had in my office of the territory in question. This visit took place prior to the protest ending period of July 3, 1997.
3. I had conversations with Ms. Sue Cirello (an employee of Florida Water Services Corporation) in late July of 1997 concerning Public Service Commission's actions concerning the application for Amendment of Territory as filed by Lake Suzy.
4. I had conversations with Mr. Charles Sweat (Vice President, Corporate Development for Florida Water Services Corporation) shortly after receiving the Public Service Commission's staff letter of August 8, 1997 stating that Lake Suzy had to file a new application for an Original Certificate. The conversation included my thoughts on the Public Service Commission staff stating that Lake Suzy had to file a new application whereby Charlotte and Desoto County would again have the ability to object to the new filing even though the above mentioned Counties did not timely object to Lake Suzy's original application filed on June 3, 1997. Mr. Sweat relayed a story whereby the Public Service Commission had delayed a territory expansion decision on Southern States Utilities, Inc. because the opposing county wanted to serve the area and the county eventually wound up serving the area in question.

LAKE SUZY UTILITIES, INC.

*Dallas A. Shepard*  
Dallas A. Shepard, President

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of March 1998, by Dallas A. Shepard, as President of Lake Suzy Utilities, Inc., who is personally known to me and who did take an oath.



*Wanda D Sapp*  
Notary Public