



ORIGINAL

April 10, 1998

Via Federal Express

Ms. Blanca Bayo
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 970657-WS; Application for certificates to
operate a water and wastewater utility in Charlotte
and DeSoto Counties by Lake Suzy Utilities, Inc.
and
Docket No. 980261-WS; Application for Amendment of
Certificate Nos. 570-W and 496-S in Charlotte County
by Florida Water Services Corporation

Dear Ms. Bayo:

Enclosed for filing please find an original and fifteen
copies of Florida Water's Motion to Consolidate to be filed
in Docket No. 970657-WS and sixteen copies to be filed in
Docket No. 980261-WS. Also enclosed is a diskette
containing the Motion saved in Word Perfect 6.0 for
Windows.

Please acknowledge filing of this Notice by date stamping
the enclosed copy of this letter and returning it in the
postage paid envelope provided.

If you have any questions, please contact me at (407) 880-
0058, ext. 260.

Sincerely yours,

Matthew J. Feil
Matthew J. Feil
Staff Attorney

Enclosures

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DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

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Florida Water Services Corporation / P.O. Box 609520 / Orlando, Florida 32860-9520 / Phone 407/880-0100 / Fax 407/884-7740 / Toll Free 1-800-432-4501

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Water For Florida's Future

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

APR 13 AM 10:00

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

MAIL ROOM Docket No. 970657-WS

and

In Re: Application for amendment of certificate nos. 570-W and 496-S in Charlotte County by Florida Water Services Corporation

Docket No. 980261-WS

FLORIDA WATER SERVICES CORPORATION'S MOTION TO CONSOLIDATE

COMES NOW, Florida Water Services Corporation ("Florida Water"), by and through its undersigned attorney, pursuant to Rule 25-22.035(2), Florida Administrative Code, files its Motion to Consolidate Docket No. 970657-WS, Lake Suzy Utilities, Inc.'s Application for Amendment of Certificates and Application for Original Certificates in Charlotte and DeSoto Counties with Docket No. 980261-WS, Florida Water's Application for Amendment of Certificate Nos. 570-W and 496-S in Charlotte County, for purposes of hearing and final disposition. In support hereof, Florida Water states as follows:

1. According to the Commission's Division of Records and Reporting, Lake Suzy Utilities, Inc. ("Lake Suzy") filed an Application for Amendment of Certificates Nos. 480-W and 416-S to Add and Delete Territory in Charlotte and DeSoto Counties

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("Application for Amendment") on June 3, 1997. At the direction of the Commission staff, Lake Suzy filed an Application for Certificates to Operate a Water and Wastewater Utility in Charlotte and DeSoto Counties ("Application for Original Certificates") on September 11, 1997. (Collectively, the Application for Amendment and the Application for Original Certificates will hereafter be identified as "Lake Suzy's Applications.") Lake Suzy's Applications have been designated for consideration in Docket No. 970657-WS and are still pending.

2. Lake Suzy's Applications request that Lake Suzy be granted certain territory in Charlotte County adjacent to, abutting and, in part, overlapping Florida Water's existing Deep Creek service area. This "disputed area" is known as the Links Subdivision. Florida Water has already been granted authority by the Commission to serve a portion of the disputed area.¹

3. On March 4, 1998, Florida Water filed in Docket No. 970657-WS its Objection to Lake Suzy's Applications and Petition for Leave to Intervene ("Florida Water's Objection"). In Florida Water's Objection, Florida Water requests a hearing on Lake

¹The area in Charlotte County which Lake Suzy seeks to add to its service area includes the Links Subdivision. The portion of the Links Subdivision lying in Charlotte County, Section 5, Township 40 South, Range 23 East, is already included in Florida Water's PSC-approved Deep Creek water and wastewater service areas. In re: Application for Grandfather Certificate to Provide Water and Wastewater Service in Charlotte County by Southern States Utilities, Inc., 95 F.P.S.C. 9:231, 238-248 (Docket No. 941301-WS, Order No. PSC-95-1164-FOF-WS, issued September 20, 1995).

Suzy's Applications.

4. On February 19, 1998, Florida Water filed with the Commission an application to amend its Deep Creek service territories to include the disputed area ("Florida Water's Application"). Florida Water's Application has been designated for consideration in Docket No. 980261-WS and is still pending.

5. On March 20, 1998, in Docket No. 980261-WS, Lake Suzy served its objection to Florida Water's Application ("Lake Suzy's Objection"). In Lake Suzy's Objection, Lake Suzy requests a hearing on Florida Water's Application.

6. Dockets Nos. 970657-WS and 980261-WS involve the same principal parties: Florida Water and Lake Suzy.

7. Dockets Nos 970657-WS and 980261-WS involve the same ultimate issue: Who should provide service to the disputed area?

8. As recognized both in Florida Water's Objection and Lake Suzy's Objection,² Dockets Nos 970657-WS and 980261-WS involve the same or similar issues of fact, law and policy: The technical and financial ability of Florida Water and Lake Suzy, a determination of whether it is in the public interest for Florida Water or Lake Suzy to provide service to the disputed area.

9. Florida Water acknowledges that certificates of authorization are intended as grants of exclusive territory for

² Lake Suzy's Objection takes issue with Florida Water's ability to provide service and asserts Lake Suzy's superior ability to serve the disputed area.

Commission regulated utilities. However, Chapter 367 does not preclude Commission approval of one utility's territory amendment simply because the territory requested is also requested by another utility in a pending proceeding or is within the existing territory of another utility, provided the Commission finds: (1) it is in the public interest to approve one utility's request over the interests of the other utility,³ (2) there will be no duplication of existing facilities, and (3) the existing facilities, if there will be a duplication of facilities, are inadequate or the person operating the facilities is unable, refuses, or neglects to provide reasonable and adequate service. Section 367.045(5)(a), Florida Statutes; St. Johns North Utility Corp. v. Fla. Pub. Serv. Comm'n, 549 So.2d 1066 (Fla. 1st DCA 1989), see City of Mount Dora v. JJ's Mobile Homes, 579 So.2d 219 (Fla. 5th DCA 1991). The Commission does not process certification filings on a first-filed-first-served basis, contrary to the assertion of Lake Suzy. Rather:

it is Commission policy to determine competing applications, not with reference to which applicant filed first, but on the basis of which utility is better qualified to provide service, and the Commission's statutory duty to determine issues in accordance with the "public interest."

³Florida Water maintains that a utility also must not have run afoul of the Commission's and the statutes certification requirements. See Section 367.045(2), Florida Statutes.

549 So. 2d 1066, 1069 (citation omitted).

10. Florida Water maintains that consolidation of Dockets Nos. 970657-WS and 980261-WS would promote the just, speedy and inexpensive resolution of both proceedings and would not unduly prejudice the rights of any party. Lake Suzy's Applications are pending and are not entitled to disposition on a first-filed-first-served basis in light of Florida Water's competing request. The principal parties and disputed issues in Dockets Nos. 970657-WS and 980261-WS are the same (or similar), and these same parties will litigate the same (or similar) issues in Docket No. 980261-WS notwithstanding the disposition of Florida Water's Objection in Docket No. 970657-WS.

WHEREFORE, Florida Water Services Corporation requests that the Prehearing Officer issue an order consolidating Dockets Nos. 970657-WS and 980261-WS for purposes of hearing and all other purposes, including final disposition.

Respectfully submitted,



Matthew J. Feil, Esq.
Florida Water Services Corporation
P. O. Box 609520
Orlando, FL 32860-9520
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Florida Water's Motion to Consolidate was furnished by overnight delivery (*) and U.S. Mail to the following this 10th day of April, 1998:

Lake Suzy Utilities, Inc.*
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