

ORIGINAL

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

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

LAKE SUZY UTILITIES, INC.'S
RESPONSE TO FLORIDA WATER SERVICES
CORPORATION'S MOTION TO CONSOLIDATE

LAKE SUZY UTILITIES, INC. ("Lake Suzy"), by and through its undersigned attorneys and pursuant to Rule 25-22.037, Florida Administrative Code, files this response in opposition to Florida Water Services Corporation's ("Florida Water") Motion to Consolidate the two above-styled dockets as follows:

1. Florida Water failed to file a timely objection to Lake

WACK _____ Suzy's application in Docket No. 970657-WS and now seeks to remedy
AFA _____ that failure through a consolidation of that docket with Florida
APP _____
CAF _____ Water's application in Docket No. 980261-WS. Florida Water cites
CMU _____ no authority for this novel procedure. To allow a consolidation of
CTR _____ these two dockets would create a dangerous procedure whereby a
EAG _____
LEG 1 utility which failed to object to another utility's application
LIN _____ could simply file its own application and have the two applications
QPC _____ consolidated. This is particularly egregious in the instant case
RCH _____

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WAS *Redemann* *Law*

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FLORIDA PUBLIC SERVICE COMMISSION

where Lake Suzy's application was filed eight months before that of Florida Water, and the fact that Lake Suzy's application is scheduled for a Commission agenda less than a month from the date of Florida Water's Motion. It is obvious that the timing of the filing of Florida Water's Motion was intended to delay the Commission's consideration of Lake Suzy's application to the detriment of Lake Suzy.

2. Florida Water's statement that a portion of the territory requested by Lake Suzy overlaps a portion of Florida Water's certificated territory is factually erroneous. Although the original legal description noticed by Lake Suzy did include a portion of property which had previously been certificated to Florida Water, when that unintentional overlap was pointed out to Lake Suzy, it amended its requested territory to eliminate the overlap. Thus, none of the territory requested by Lake Suzy is within Florida Water's certificated territory.

3. One of the criteria for consolidation is that there are "identical parties". Contrary to Florida Water's assertion that is not true. In Lake Suzy's application in Docket No. 970657-WS, the only party is Lake Suzy. In Florida Water's application in Docket No. 980261-WS, the parties are Florida Water, Lake Suzy, Charlotte County and Haus Development.

4. The other criteria for consolidation is that they "involve similar issues of law or fact". Lake Suzy's application is to certificate territory in DeSoto and Charlotte Counties, which includes to provide only water service to the Links subdivision as

Charlotte County will be providing wastewater service. Florida Water's application seeks authority to provide both water and wastewater service to the Links subdivision, as well as additional territory not being sought by Lake Suzy. Other than the 50 lots in the Links subdivision, the territories which are subject to the respective applications are different.

5. Florida Water's reliance upon *St. Johns North Utility Corp. v. Florida Public Service Commission*, 549 So.2d 1066 (Fla. 1st DCA 1989) is misplaced. In that decision, the Court was construing a very different statutory scheme. The Court was construing Section 367.061, Florida Statutes, (1985) by which a utility could extend its service to a new area for a period of one year after providing its notice of intent to do so. That procedure is no longer the law. The obvious differences are more fully articulated by the Commission in *In Re: Objections by St. Johns Utility Corp. and General Development Utilities, Inc. to Notice by Sunray Utilities, Inc. of Intention to Apply for Original Certificates Authorizing Water and Sewer Service in St. Johns County*, 88 F.P.S.C. 6:41, Order No. 19428, issued June 6, 1988. This Commission made it clear that by giving notice pursuant to Section 367.061, Florida Statutes, (1985) a utility was under no obligation to proceed with a proposed extension, further pointing out in that case that St. Johns North Utility Corp. had not entered into any agreements to serve anyone in the requested service area. In the instant case, Lake Suzy has an agreement with the owner of almost

all of the lots in question to provide potable water service as soon as authorized by this Commission to do so.

6. Obviously, Lake Suzy would be prejudiced by consolidation of these two Dockets. So would Haus Development which owns almost all of the lots in question and who has entered into an agreement with Lake Suzy for water service. So would Charlotte County which settled its protest of Lake Suzy's application and is entitled to provide wastewater service to the property in question. Haus Development and Charlotte County would be further prejudiced by having to participate in a hearing involving Lake Suzy's application, and the additional expense of such participation. Two other developers have water and wastewater agreements with Lake Suzy which will be affected by consolidation. These developers are King's Trust and Charlotte-DeSoto College Foundation, both of whom are proposing development in DeSoto County and are in need of water and wastewater service. The expense of a consolidated formal administrative proceeding is substantial, particularly to a utility the size of Lake Suzy. To Florida Water, such expense is insignificant and it is using its vast financial resources to circumvent its failure to protest Lake Suzy's application by filing one of its own. Further, Lake Suzy's application is scheduled to come before the Commission in less than a month. Tactics by Florida Water such as the filing of the Motion to Consolidate are dilatory and should not be allowed.

WHEREFORE, Lake Suzy requests this Commission enter an Order denying the Motion to Consolidate.

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

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A handwritten signature in black ink, appearing to read "Martin S. Friedman", written over the typed name below.

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, Martha Young Burton, Esquire, Assistant County Attorney, 18500 Murdock Circle, Port Charlotte, Florida 33948-1094, Haus Development, Inc., Post Office Box 3024, Port Charlotte, Florida 33949 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 April, 1998.


MARTIN S. FRIEDMAN

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