



Public Service Commission

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RECORDS AND REPORTING

DATE: FEBRUARY 4, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF APPEALS (HELTON) *Nat DES*
DIVISION OF WATER AND WASTEWATER (MESSER) *ssmpswj*

RE: DOCKET NO. 982002-WS - PETITION OF ST. JOHNS SERVICE COMPANY FOR DECLARATORY STATEMENT ON APPLICABILITY AND EFFECT OF 367.171(7), F.S.
COUNTY: ST. JOHNS

AGENDA: 2/16/99 - REGULAR AGENDA - DECISION ON DECLARATORY STATEMENT - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: MARCH 29, 1999 - FINAL ORDER MUST BE ISSUED BY THIS DATE PURSUANT TO SECTION 120.565(3), FLORIDA STATUTES

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\982002.RCM

CASE BACKGROUND

By petition filed December 29, 1998, St. Johns Service Company (Petitioner or the utility) seeks a declaratory statement from the Commission concerning the applicability and effect of Section 367.171(7), Florida Statutes, to its service arrangement with two not-for-profit homeowners associations that serve customers in Duval County. On January 29, 1999, the St. Johns County Board of County Commissioners filed a letter to comment on the utility's petition.

DOCUMENT NUMBER-DATE

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant St. Johns Service Company's petition for declaratory statement?

RECOMMENDATION: Yes, the Commission should grant the petition for declaratory statement in the affirmative and declare that the service arrangement discussed below between the petitioner and the homeowners associations does not render St. Johns Service Company subject to the jurisdiction of the Florida Public Service Commission, and the provisions of Section 367.171(7), Florida Statutes, are not applicable because St. Johns Service Company is not a utility system whose service transverses the boundary of St. Johns and Duval Counties. (HELTON, MESSER)

STAFF ANALYSIS: Pursuant to Section 120.565(1), Florida Statutes:

[a]ny substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

The petitioner is a water and wastewater company whose utility activities are regulated by St. Johns County. Among its customers are two homeowners associations that take bulk water and wastewater service from the utility. These homeowner associations, Sawgrass Homeowners Association VII, Inc. (SHA VII),¹ and Sawgrass Homeowners Association VIII, Inc (SHA VIII),² serve customers in Duval County. The petitioner's point of delivery to the associations, however, is in St. Johns County.

¹ SHA VII is currently receiving service from the petitioner.

² SHA VIII is not currently receiving service from the petitioner, but plans to do so in the future. For purposes of this recommendation, the recommended declaration assumes that SHA VIII currently owns and operates distribution facilities to serve customers in Duval County. This assumption can be made because the legal analysis is the same regardless whether the homeowners association either currently serves or proposes to serve customers in Duval County using distribution and collection lines that it either owns now or plans to own in the future.

The question the petitioner wants resolved is whether Section 367.171(7), Florida Statutes, requires the Commission to regulate the utility because of the service arrangement with the homeowners associations. The pertinent part of this statute provides:

the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional

Section 367.171(7), Florida Statutes. The utility seeks an answer to this question because St. Johns Water and Sewer Authority's (the Authority's) attorney has recommended that the Authority refrain from actively regulating the petitioner until the Commission determines its jurisdiction has not been invoked by the service arrangement at issue here.

Staff recommends that the Commission declare that its jurisdiction under Section 367.171(7) has not been invoked based on the following facts alleged in the petition: The petitioner provides service exclusively to customers in St. Johns County. Only the homeowners associations own and operate distribution and collection facilities in Duval County. The homeowners associations receive service from the petitioner at a point of delivery in St. Johns County at a rate approved by the Authority. The petitioner does not provide service to any active customer connections in Duval County. No customer connection charges, customer installation fees, developer agreements, or other contractual arrangements exist between any customers in Duval County and the petitioner other than the delivery of bulk service to the homeowners associations in St. Johns County. The petitioner does not own any lines or appurtenant facilities on the homeowners associations' side of the point of delivery. Under these facts, the service provided by the petitioner in St. Johns County does not transverse county boundaries. Thus, Section 367.171(7), Florida Statutes, does not act to invoke the Commission's jurisdiction over the utility in this particular circumstance.

Staff's recommendation is consistent with the legislative intent behind Section 367.171(7), Florida Statutes. When the Legislature enacted this provision in 1989, it "intended to eliminate the regulatory problems that exist when utility systems provide service across political boundaries and are subject to economic regulation by two or more regulatory agencies" In re: Petition of General Development Utilities, Inc., for Declaratory Statement Concerning Regulatory Jurisdiction over its Water and Sewer System in DeSoto, Charlotte, and Sarasota Counties,

Order No. 22459, 90 F.P.S.C. 1:396 (1990). In this case, the petitioner serves only customers in St. Johns County, and its customers pay rates and charges regulated by only one regulatory authority.

In addition, staff's recommendation is consistent with Town of Jupiter v. Village of Tequesta, 713 So. 2d 429 (Fla. 4th DCA 1998). While Jupiter concerned a different statutory scheme than the question before the Commission, it is relevant because the court had to address whether Jupiter operated a water system in Tequesta when Jupiter supplied Tequesta bulk potable water at a point of delivery. The court noted:

Jupiter neither hooks up nor disconnects any customers within Tequesta; it has no pumps or meters within Tequesta; it reads no customer meters there; it sends no bills there; indeed it has no contact of any kind in Tequesta with any consumer of potable water.

713 So. 2d at 431. Thus, the court concluded that:

[p]roviding Tequesta with bulk potable water at a point of delivery does not, in our opinion, constitute actual operation by Jupiter within Tequesta's consumer service area.

Id. Similarly, since the petitioner has no relationship with actual consumers in Duval County, the petitioner does not provide service in Duval County.

By correspondence dated January 29, 1999, the attorney for the Board of County Commissioners for St. Johns County requested the Commission to "fully review all relevant information including the terms of any bulk service agreement when considering [the] petition." This correspondence is a permissible communication under Section 350.042(1), Florida Statutes, which may be included in the record of this proceeding for the Commission's consideration.

Regarding the substance of the letter, the St. Johns County Board of Commissioners seems concerned that the service arrangement described in the petition filed at the Commission is different from the service arrangement as described to the county by the utility. In particular, the county states that a utility representative informed the county, after the petition for declaratory statement was filed, that it "would be handling connections and disconnections for Duval County residents, reading customer meters

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and possibly performing other services under its bulk service agreement for the homeowner's associations." According to the county, it neither supports or objects to the petition filed by the utility, the county simply wants the Commission to "consider all relevant facts in reaching its decision including reviewing any bulk water agreements." (Emphasis in letter)

Pursuant to Rule 28-105.003, Florida Administrative Code, the Commission "may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts." Moreover, the only type of hearing that can be held concerning a declaratory statement is a Section 120.57(2), Florida Statutes, proceeding. Rule 28-105.003, Florida Administrative Code. Thus, the uniform rules do not contemplate any factual disputes in a declaratory statement proceeding.

Staff recommends that the Commission go forward and base its declaration on the facts as they are presented in the petition with the understanding that any change in the facts may significantly alter or even void the Commission's declaratory statement. For instance, in this case, the petitioner has not represented that it will have any contact with the homeowners associations in Duval County. If the petitioner had represented that it would be performing any services in Duval County, such as reading meters or handling connections and disconnections, staff's recommendation could be substantially different.

Based on the discussion above, staff recommends that the Commission answer the petition in the affirmative and declare, as requested by the petitioner, that the service arrangement described above between the petitioner and the homeowners associations does not render St. Johns Service Company subject to the jurisdiction of the Florida Public Service Commission, and the provisions of Section 367.171(7), Florida Statutes, are not applicable here because St. Johns Service Company is not a utility system whose service transverses the boundary of St. Johns and Duval Counties.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission votes to dispose of the petition for declaratory statement, the docket should be closed.
(HELTON)

STAFF ANALYSIS: If the Commission answers the petition, a final order can be issued and the docket closed.