

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

RECORDS AND REPORTING

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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 FOR COMMISSION TO TAKE OFFICIAL NOTICE

LAKE SUZY UTILITIES, INC. ("LSU"), by and through its undersigned attorneys, files this Response to Florida Water Services Corporation's ("Florida Water") Motion for Commission to Take Official Notice ("Motion").

1. Florida Water in its Motion requests that this Commission take official notice of DeSoto County Ordinance No. 199-10, enacted June 8, 1999 which Florida Water states grants a franchise to Florida Water for "all of the territory requested by Lake Suzy Utilities, Inc. in this docket, except for the Links subdivision (located in Charlotte County).

2. Florida Water, through the procedures that it has utilized in this matter, is attempting to make a mockery of this

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Commission's jurisdiction. As set forth more fully below, Florida Water filed an objection to Lake Suzy's application which included territory in both DeSoto and Charlotte Counties. On the eve of the final hearing before the Commission, since DeSoto County had not yet adopted an Ordinance implementing its jurisdiction over water and wastewater utilities, Florida Water made Lake Suzy the preverbal "offer it could not refuse". Once the pressure of the final hearing was removed, Florida Water dragged its feet in finalizing the settlement, and included conditions that it knew at the outset would not be acceptable to Lake Suzy. Then, behind Lake Suzy's back and in violation of the express terms of an agreement, expedited its application for a franchise from DeSoto County, and now purportedly will take the position that this Commission does not have the jurisdiction to grant that portion of Lake Suzy's application which conflicts with its DeSoto County franchise. This Commission should not condone such abhorrent behavior by Florida Water.

3. In June, 1997, Lake Suzy filed an amendment application believing that to be the appropriate procedure to add territory in Charlotte County and to be subject to the Commission's jurisdiction since DeSoto County had taken no action to implement its newly acquired jurisdiction of water and wastewater utilities. Two

months later, Lake Suzy was advised that it needed to file an original certificate application, which it did in September, 1997. Although DeSoto and Charlotte County filed objections, both were subsequently withdrawn.

4. Then along comes Florida Water in February, 1998 and files an application for the same territory in Charlotte County for which Lake Suzy had made application five months previously. Florida Water could not make a valid objection for the territory which Lake Suzy sought in DeSoto County since it had no facilities in that County. Shortly after filing its application, which was objected to by Lake Suzy and Charlotte County, Florida Water filed an untimely objection to Lake Suzy's application. This Commission allowed the objection and consolidated the two applications.

5. At that time no one could figure out why Florida Water was putting up such a fight for a 48 lot subdivision. The answer is now abundantly clear. Florida Water's application was merely a ruse to delay action of this Commission in Lake Suzy's application until it could "get its ducks in a row" in DeSoto County. When it became apparent that DeSoto County was not going to adopt its Ordinance before the Commission held its final hearing, Florida Water made an attractive settlement offer, which in retrospect we now know was never intended by Florida Water to reach fruition.

6. In an abundance of caution, and although Lake Suzy moved forward with the settlement in the utmost good faith, Lake Suzy did get Florida Water to agree to the following:

Florida Water has filed an application for a franchise with DeSoto County. By previous arrangement between us Lake Suzy has agreed not to file a competing application at this time until the negotiations for the acquisition of the Lake Suzy stock have been terminated. It is the intent of Florida Water and Lake Suzy that if the negotiations are not successful, the application currently filed by Florida Water and an application to be filed by Lake Suzy will be heard by the DeSoto County Commission at the same public hearing.

Accordingly, Florida Water agrees, as it has before, that it will not seek to process its franchise application with DeSoto County. Should DeSoto County process the application on its own initiative, Florida Water agrees to withdraw same or take whatever other actions are necessary so that, as and when Lake Suzy files a competing application, both of these applications will be heard at the same public hearing.

In clear violation of that agreement, Florida Water moved forward unilaterally with its application. Although Lake Suzy filed its competing application as soon as possible with DeSoto County, after learning that Florida Water was not going to honor its agreement, the application was not filed soon enough to be noticed for hearing at the same time as Florida Water's applica-


tion. Although Lake Suzy reminded Florida Water of the agreement, Florida Water continued to ignore it and moved its application through the political process in DeSoto County.

7. DeSoto County Ordinance No. 99-10 should not be officially noticed or considered by this Commission for two reasons. First, Lake Suzy intends to seek judicial review of DeSoto County's actions in enacting that Ordinance, and until such review is ruled upon, the Ordinance is not final. Secondly, but for Florida Water's objection, Lake Suzy's application for an original certificate would have been granted by this Commission. This Commission should not sanction the surreptitious actions of Florida Water in delaying Commission action and then going to a different forum and accomplishing what it could never have accomplished at the Commission. Florida Water, in this proceeding, is no doubt going to argue that since DeSoto County awarded it a franchise that it is first in time and thus first in right pursuant to *City of Mount Dora v. JJ's Mobile Homes*, 579 So.2d 219 (5<sup>th</sup> DCA 1991). The *City of Mount Dora* case did not consider the situation where a utility becomes first in time solely because it was able to delay action in one forum while it went forward in another forum. Lake Suzy expects the courts not to condone such action.

WHEREFORE, Lake Suzy requests this Commission deny Florida Water's Motion and reaffirm that the action by DeSoto County does not divest this Commission of jurisdiction to award Lake Suzy the territory in DeSoto County requested in its application.

Respectfully submitted this 23rd day of June, 1999, by:

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MARTIN S. FRIEDMAN  
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct 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, Ms. Charlotte L. Sopko, Haus Development, Inc., Post Office Box 3024, Port Charlotte, Florida 33949, John Marks, Esquire, Knowles, Marks & Randolph, 215 South Monroe Street, Tallahassee, Florida 32301 and by hand delivery to Tim Vacarro, Esquire, Florida Public Service Commission, Legal Division, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 this 23rd day of June, 1999.

  
MARTIN S. FRIEDMAN

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