



# Public Service Commission

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## -M-E-M-O-R-A-N-D-U-M-

RECORDS AND REPORTING

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**DATE:** DECEMBER 9, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF LEGAL SERVICES (CHRISTENSEN) *R-RL*  
DIVISION OF WATER AND WASTEWATER (REHWINKEL, REDEMANN) *SSM*

**RE:** DOCKET NO. 991632-WS - APPLICATION FOR ORIGINAL CERTIFICATE TO OPERATE WATER AND WASTEWATER UTILITY IN BAY COUNTY BY DANA UTILITY CORPORATION. *Bl*  
COUNTY: BAY

**AGENDA:** 12/21/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** 90-DAY STATUTORY DEADLINE- JANUARY 19, 2000.

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\991632.RCM

### CASE BACKGROUND

On October 20, 1999, Dana Utility Corporation (Dana or utility) filed an application for an original certificate to operate a water and wastewater facility in Bay County, Florida. Simultaneously, the utility filed a petition for temporary waiver of Rules 25-30.033 (1)(h), (k), (m), (o), (t), (u), (v), (w); (2); (3); and (4), Florida Administrative Code.

Dana is a wholly-owned subsidiary of Lake Merial Development Company, Inc. (Lake Merial). Dana was formed for the specific purpose of providing water and wastewater service to Lake Merial multi-use development. Dana's parent company, Lake Merial, has entered into an agreement with Fancher Management Group, Inc. (Fancher Management) to provide assessment, planning, and operational services for Dana. Mr. Fancher, president of Fancher Management, has over 25 years experience in managing water and wastewater facilities in Florida.

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Lake Merial owns approximately 95% (approximately 2,100 acres) of the land included within the territorial description proposed to be served by Dana. The remainder of the land has been donated to the Bay County School Board for the construction of a public school which is presently under construction. This school will require utility service beginning on or about March 1, 2000. Further, the development is scheduled to have a substantial number of lots available for service beginning in the Summer of 2000.

This recommendation addresses the petition for temporary waiver of Rules 25-30.033 (1)(h), (k), (m), (o), (t), (u), (v), (w); (2); (3); and (4), Florida Administrative Code. A recommendation on whether an original certificate should be issued will be filed at a subsequent Agenda Conference.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant Dana Utility Corporation's petition for a temporary waiver of Rules 25-30.033 (1)(h), (k), (m), (o), (t), (u), (v), (w); (2); (3); and (4) Florida Administrative Code?

**RECOMMENDATION:** Yes. Dana Utility Corporation's petition for a temporary waiver of Rules 25-30.033 (1)(h), (k), (m), (o), (t), (u), (v), (w); (2); (3); and (4), Florida Administrative Code, should be granted. (Christensen, Rehwinkel, Redemann)

**STAFF ANALYSIS:** Rule 25-30.033 (1)(h), (k), (m), (o), (t), (u), (v), (w), Florida Administrative Code, addresses the information necessary for setting initial rates and charges and requires the utility to file the following information: the number of equivalent residential connections proposed to be served; one original and two copies of a sample tariff, containing all rates, classifications, charges, rules, and regulations; one copy of a detailed system map showing the proposed lines, treatment facilities and the territory to be served; a statement regarding the separate capacities of the proposed lines and treatment facilities; a cost study including customer growth projections supporting the proposed rates, charges and service availability charges; a schedule showing the projected cost of the proposed system(s) by uniform system of accounts and account numbers; a schedule showing the projected operating expenses of the proposed system; and a schedule showing the projected capital structure including methods of financing the

construction. Rule 25-30.033 (2); (3); and (4), Florida Administrative Code, requires the utility to implement the base facility and usage rate structure, to establish a return on common equity using the Commission's equity leverage formula, and authorizes the accrued allowance for funds used during construction.

#### Statutory Requirements

Notice of the petition for temporary waiver of the above-mentioned rules was provided to the Department of State and was thereafter published in the Florida Administrative Weekly on November 5, 1999, pursuant to Section 120.542(6), Florida Statutes. No written comments on the petition for temporary waiver have been received and the time for filing said comments has expired. Pursuant to Chapter 120.542(8), Florida Statutes, the Commission must grant or deny the petition within 90 days of receipt of the completed petition. The petition was completed on October 20, 1999. Thus the Commission must rule on it by January 19, 2000.

Section 120.542(1), Florida Statutes, authorizes the Commission to grant variances or waivers to the requirements of its rules. Section 120.542(2), Florida Statutes, sets forth the requirements for granting a variance or waiver to an agencies rules which are as follows: 1) the person subject to the rules must demonstrate that the underlying purpose of the statute has been or will be achieve by other means; (2) that strict application of the rules would cause the person substantial hardship; or (3) application of the rules would violate the principles of fairness. "Substantial hardship" as defined in this section means demonstrated economic, technological, legal, or other hardship by the person requesting the variance or waiver.

#### The Underlying Statute

The underlying statutory provisions pertaining to the above-mentioned rules are Sections 367.031 and 367.045, Florida Statutes. Section 367.031 requires each utility seeking to provide water and wastewater service obtain a certificate of authorization from the Commission prior to obtaining permits from the Department of Environmental Protection and water management districts. Further, Section 367.045(5)(a), Florida Statutes, states that the Commission may grant a certificate of authorization if it is in the public interest. The purpose of Sections 367.031 and 367.045, Florida Statutes, is to ensure that a utility has the financial and technical ability to provide service and that there is a need for service in the proposed service area.

Although Dana has requested a temporary waiver for filing part of the required financial and technical information, Staff believes that Dana has provided sufficient information to demonstrate that it will have the financial and technical ability to provide water and wastewater service to the proposed service area. Dana is a wholly-owned subsidiary of Lake Merial. Lake Merial has signed an agreement with Dana to provide financial assistance to the utility for a period of ten years. Lake Merial has obtained a Utility Loan Commitment from Dana Properties, Ltd. (Dana Properties), its parent company, that provides for construction and operational funding for the utility up to \$4,500,000. Further, Dana filed a copy of the financial statement of Dana Properties that shows a net worth of approximately 3,900,000, pounds sterling, which is over \$6,000,000 U.S. dollars. Mr. Goldstein, President of Lake Merial, has 25 years of management experience including a position as Chief Operational Officer for developments which operated water and wastewater facilities. Dana has entered into an agreement with Fancher Management to provide assessment, planning, and management service for the utility. Mr. Fancher, the president Fancher Management, also has 25 years plus experience in the operations and management of water and wastewater facilities.

Lake Merial development will need water and wastewater service. Lake Merial intends to have lots available for service by the Summer of 2000. Moreover, a public school is currently under construction in this area which will require water and wastewater service beginning March 1, 2000. The closest city, Lynn Haven, is unable to provide service to the area. The two closest public utilities, Bay County and Gulf Coast Electric Cooperative, are unable to provide service at this time. The earliest time either utility could provide water service is three to five years from now and longer for wastewater. Dana provided notice in a paper of general circulation on October 14, 1999, which contained a typographical error in one of the parcel descriptions by leaving out the word "North" in one of survey measures. However, Staff believes that the absence of this word does not materially change the meaning of the legal description and would not be subject to misinterpretation when placed in the context of the overall legal description contained in the notice. Dana has provided a corrected legal description. Staff does not believe that this typographic error requires renoticing for the reasons stated above. No protests have been received regarding Dana's application or petition for temporary rule waiver. Included in the application is an unexecuted sale contract that would convey the land for the proposed site of the water and wastewater facilities to Dana and related draft warranty deed. Currently, the land is owned by Dana's parent company, Lake Merial.

Substantial Hardship

In the petition for temporary waiver, Dana stated that gathering the information required by the rules to establish the initial rates and charges would have delayed the filing of the application for a certificate of authorization by approximately 120 days. This delay in filing of the application would have delayed the time frame for Commission action on the application, issuance of the construction permits by the Department of Environmental Protection (DEP), and ultimately the construction of the water and wastewater facilities. If Dana had waited the 120 days, then Lake Merial and Dana would have been unable to fulfil their obligation to provide water service to the public school by March 1, 2000. Therefore, Dana faces technical and other hardship because it needs to obtain its certificate of authorization with sufficient time to construct the water and wastewater facilities to meet the needs of the public school. In addition, Lake Merial and Dana require the certificate of authorization to provide water and wastewater service prior to DEP issuing construction permits.

When a utility has met the criteria set forth in Section 120.542, Florida Statutes, the Commission has granted a temporary waiver of the rules regarding establishment of initial rates and charges. See, Order No. PSC-98-1644-FOF-WS, issued December 7, 1998 in Docket No. 980876-WS In re: Application for certificate to operate water and wastewater facility in Marion County by Ocala Springs Utilities, Inc. However, if the utility is unable to meet the underlying purpose of the statute, the Commission has not granted a rule waiver. See Order No. PSC-99-1603-PAA-WS, issued August 16, 1999, in Docket No. 990696-WS, In re: Application for original certificates to operate water and wastewater utility in Duval and St. Johns Counties by Nocatee Utility Corporation, (Consummating Order No. PSC-99-1800-CO-WS, issued September 15, 1999). In the instant case, Dana has met the underlying purpose of Sections 367.031 and 367.045, Florida Statutes, because it has demonstrated the technical and financial ability to provide service and a need for service in the proposed territory. In addition, Dana has shown that it will suffer substantial hardship if all of the provisions of Rule 25-30.033, Florida Administrative Code, are strictly applied.

Dana has requested a waiver of the rules for a period of 120 days or until February 20, 2000. Upon the completion of the deferral period, the utility proposed to submit a separate application for initial rates and charges along with the supporting financial, engineering, and operating information. Therefore, based on Section 120.542, Florida Statutes, staff recommends that

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the Commission grant Dana's petition for temporary waiver of Rules 25-30.033 (1)(h), (k), (m), (o), (t), (u), (v), (w); (2); (3); and (4), Florida Administrative Code, for a period of 120 days from the effective date of this order or until February 20, 2000, whichever date occurs first.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No. This docket should remain open pending Commission action on Dana's application for an original water and wastewater certificate. (Christensen)

**STAFF ANALYSIS:** As previously stated, Dana has applied for an original certificate of authorization to operate a water and wastewater facility in Bay County. Therefore, this docket should remain open pending Commission action on Dana's application for an original water and wastewater certificate.