



Public Service Commission

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RECORDS AND REPORTING

DATE: JANUARY 6, 2000

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

FROM: DIVISION OF WATER AND WASTEWATER (REHWINKEL, REDEMANN)
DIVISION OF LEGAL SERVICES (CHRISTENSEN)

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

COUNTY: BAY

AGENDA: 01/18/00 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

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

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\991632WS.RCM

CASE BACKGROUND

On October 20, 1999, Dana Utility Corporation (Dana or utility) filed an application for original certificates 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. On December 21, 1999, the Commission approved 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. The order reflecting the Commission's decision is scheduled to be issued on January 10, 2000.

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

DOCUMENT NUMBER-DATE

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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.

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.

Pursuant to Section 367.031, Florida Statutes, the Commission is required to grant or deny an application for certificates of authorization within 90 days after the official filing date of the completed application, unless an objection is filed pursuant to Section 120.57, Florida Statutes. No such objection to this application has been received. Therefore, this recommendation addresses whether the original certificates should be issued. The establishment of rates and charges will be the subject of a later recommendation to be filed in this docket.

DISCUSSION OF ISSUES

ISSUE 1: Should the application of Dana Utility Corporation for original certificates of authorization to operate a water and wastewater utility be granted?

RECOMMENDATION: Yes, Dana Utility Corporation should be granted Water Certificate No. 614-W and Wastewater Certificate 529-S to serve the territory described in Attachment A. The utility should be required to file a separate application in this docket for initial rates and charges with supporting financial, technical, and engineering data by February 20, 2000, consistent with this Commission's vote on the temporary rule waiver in this docket. Further, the utility must file with this Commission an executed copy of the warranty deed within 30 days of the issuance date of the order pursuant to Rule 25-30.033(1)(j), Florida Administrative Code. (REHWINKEL, REDEMANN, CHRISTENSEN)

STAFF ANALYSIS: As stated in the case background, on October 20, 1999, Dana Utility Corporation (Dana or utility) filed an application for original certificates to operate a water and wastewater facility in Bay County, Florida. Dana is a wholly owned subsidiary of Lake Merial Development Company, Inc. (Lake Merial). 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. Dana was formed for the specific purpose of providing water and wastewater service to Lake Merial multi-use development.

On December 21, 1999, the Commission approved the utility'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, which would have required the utility to file the financial, engineering and operational information necessary to establish initial rates and charges. The order reflecting the Commission's decision is scheduled to be issued on January 10, 2000. The application as filed is otherwise in compliance with Section 367.045, Florida Statutes, and all governing statutes and administrative rules concerning applications for original certificates.

DOCKET NO. 991632-WS
DATE: JANUARY 6, 2000

Filing Fee: The utility submitted a check in the amount of \$3,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

Evidence of Ownership: Dana does not currently own the land where the water and wastewater facilities will be constructed. The current owner is Dana's sole shareholder, Lake Merial. However, pursuant to Rule 25-30.033(1)(j), Florida Administrative Code, Dana has provided an executed copy of a contract for the sale and purchase of the land and an unexecuted copy of the related warranty deed. Rule 25-30.033(1)(j), Florida Administrative Code, also requires that the utility provide an executed copy of the warranty deed within 30 days of the issuance date of the order granting original certificates. Currently, the utility has met criteria set forth in the rule but will need to file the executed warranty deed within 30 days of the issuance date of the order.

Territory Description: An adequate service territory description has been provided as prescribed by Rule 25-30.033(1)(l), Florida Administrative Code. A description of the territory requested by the applicant is appended to this memorandum as Attachment A.

Noticing: In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the notice of application have been received and the time for filing such has expired.

Financial and Technical Ability: Although Dana requested and the Commission approved 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.

As stated earlier, 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 of 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.

Regarding technical ability, 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. Also, Dana has entered into an agreement with Fancher Management to provide assessment, planning, and management service for the utility. Mr. Fancher, president of Fancher Management, has 25 years plus experience in the operations and management of water and wastewater facilities.

Need for Service: Staff believes that Lake Merial development has demonstrated the need for 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.

Local Comprehensive Plan: In its application, Dana states that to the best of the utility's knowledge, the provision of water and wastewater service to the Lake Merial Development is consistent with the water and wastewater sections of the Bay County Comprehensive Plan, as approved by the Department of Community Affairs. The utility included a copy of the Development Agreement with Bay County which was entered into on February 2, 1999 by the owner of utility. The Agreement provides, among other things, for the Developer to provide sanitary sewer and potable water to the project and finds that the Development Agreement is consistent with the County's 2000 Comprehensive Plan. This Agreement is recorded in the Official Records of Bay County, Florida.

The Commission received a letter from the Department of Community Affairs on December 7, 1999 stating that it had completed the review of Dana Utility Corporation's request for original certificates. The letter further stated that no growth management concerns had been identified by the DCA and that "the request is consistent with the Developer Agreement entered into between the County and the developer on February 2, 1999." Staff believes that the utility has met the requirement of Rule 25-30.033 (1)(f), Florida Administrative Code.

Based on all of the above, staff recommends that it is in the public interest to grant Dana Utilities Inc. Water Certificate No. 614-W and Wastewater Certificate No. 529-S to serve the territory described in Attachment A. The utility should be required to file a separate application in this docket for initial rates and charges with supporting financial, engineering and operating information by February 20, 2000, consistent with this Commission's vote on the

DOCKET NO. 991632-WS
DATE: JANUARY 6, 2000

temporary rule waiver in this docket. Further, the utility must file with this Commission an executed copy of the warranty deed within 30 days of the issuance of the order granting the original certificates pursuant to Rule 25-30.033(1)(j), Florida Administrative Code.

DOCKET NO. 991632-WS
DATE: JANUARY 6, 2000

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending the completion of the filing requirements by the utility and the establishment of resulting rates and charges by the Commission. The utility should be put on notice that it cannot receive any compensation for utility service until its rates and charges have been established by the Commission pursuant to Sections 367.045, and Section 367.081(1), Florida Statutes. (REHWINKEL, CHRISTENSEN)

STAFF ANALYSIS: Because the establishment of rates and charges along with the submission of financial, engineering and operational information have been temporarily waived pursuant to this Commission's vote at the December 21, 1999, agenda conference, this docket should remain open. Further, pending the completion of all filing requirements, the utility should be put on notice that it cannot receive compensation for any utility service until its rates and charges have been established by future Commission order pursuant to Sections 367.045, and 367.081(1), Florida Statutes.

DANA UTILITY CORPORATION

TERRITORY DESCRIPTION

WATER AND WASTEWATER SERVICE AREA

BAY COUNTY

PARCEL I: Commence at the Northwest Corner of Section 15, Township 1 South, Range 14 West, Bay County, Florida. Thence S01°12'22"W along the West line of said Section 15 for 409.73 feet to the centerline of construction of a Gulf Power Company easement (100 foot wide), described in Deed Book 116, 105, in Public Records of Bay County, Florida, for the Point of Beginning. Thence S51°03'38"E along the centerline of construction of said Gulf Power Company Easement for 930.87 feet; thence S01°12'45"W for 2478.33 feet to the centerline of a dirt road; thence N73°10'07"W along said centerline for 243.01 feet; thence N74°46'38"W along said centerline for 517.31 feet to said West line of Section 15; thence N01°12'22"E along said West line for 2857.26 feet to the Point of Beginning.

PARCEL II: Section 16, Township 1 South, Range 14 West, Bay County, Florida.

LESS AND EXCEPT: Commence at the Northeast Corner of Section 16, Township 1 South, Range 14 West, Bay County, Florida. Thence N88°14'33"W along the North line of said Section 16 for 536.30 feet to the centerline of construction of a Gulf Power Company easement (100 foot wide), as described in Deed Book 116, Page 105, of the Public Records of Bay County, Florida. Thence continue N88°14'33"W along said North line of Section 16 for 708.58 feet to the Point of Beginning. Thence S03°49'15"E for 1341.86 feet; thence North 88°57'07"W for 4147.18 feet to the West line of said Section 16; thence N01°03'36"E along said West line for 1386.96 feet to the Northwest corner of said Section 16; thence S88°14'32"E along the North line of said Section 16 for 4033.49 feet to the Point of Beginning.

ALSO LESS AND EXCEPT: Begin at the Northeast Corner of Section 16, Township 1 South, Range 14 West, Bay County, Florida. Thence N88°14'33"W along the North line of said Section 16 for 536.30 feet to the centerline of construction of a Gulf Power Company Easement, described in Deed Book 116, Page 105, of the Public Records of Bay County, Florida. Thence S51°03'38"E along said centerline of construction for 678.09 feet to the East line of said Section 16; thence N01°12'22"E along said East line for 409.73 feet to the Point of Beginning.

DOCKET NO. 991632-WS
DATE: JANUARY 6, 2000

PARCEL III: The West Half of the Northeast Quarter of the Northwest Quarter; the South Half of the Northwest Quarter; the Southwest Quarter; the Northwest Quarter of the Southeast Quarter; the East Half of the Southeast Quarter; the South Half of the Northeast Quarter; Section 17, Township 1 South, Range 14 West.

LESS AND EXCEPT: Commence at the Northeast Corner of Section 16, Township 1 South, Range 14 West, Bay County, Florida. Thence N88°14'33"W along the North line of said Section 16 for 1244.88 feet; thence S03°49'15"E for 1341.86 feet; thence N88°57'07"W for 4147.18 feet to the East line of Section 17, Township 1 South, Range 14 West, for the Point of Beginning. Thence continue N88°57'07"W for 1979.26 feet to the West line of the East Half of the Southwest Quarter of the Northeast Quarter of said Section 17; thence N00°55'34"E along said West line for 42.04 feet to the North line of the South Half of the Northeast Quarter of said Section 17; thence S89°50'45"E along said North line for 1979.60 feet to the East line of said Section 17; thence S01°03'36"E along said East line for 72.92 feet to the Point of Beginning.

PARCEL IV: That portion of Section 19, Township 1 South, Range 14 West, Bay County Florida, East of State Road No. 77.

PARCELS V, VI & VII: Begin at the Southwest Corner of Section 20, Township 1 South, Range 14 West, in Bay County, Florida; thence North 89°33'17" East along the South line of Section 20 for 1275.18 feet; thence South 01°20'42" West for 1318.19 feet; thence North 89°47'31" East for 1584.08 feet to the Westerly right of way line of Prosper Drive; thence Northeasterly along said right of way line; the following courses and distances: North 19°30'31" East for 986.23 feet, North 19°50'23" East for 424.25 feet, North 18°52'36" East for 617.29 feet; thence North 20°16'54" East for 446.84 feet, North 23°48'30" East for 392.90 feet; North 28°50'30" East for 582.69 feet, North 32°39'03" East for 506.28 feet, North 33°26'17" East for 1587.99 feet, North 33°26'17" East for 917.70 feet, North 32°07'37" East for 487.21 feet, North 36°44'20" East for 540.58 feet to the North line of Section 21, Township 1 South, Range 14 West in Bay County, Florida; thence departing said Westerly right of way line, bear North 87°47'21" West along the North line of said Section 21 for 1023.11 feet to the Northwest Corner of said Section 21; thence South 89°54'31" West for 1313.66 feet; thence South 89°54'26" West for 1313.76 feet; thence South 89°54'46" West for 2,627.49 feet to the Northwest Corner of Section 20, Township 1 South, Range 14 West in Bay County, Florida; thence South 00°35'42" West for 5254.18 feet to the Southwest Corner of said Section and the Point of Beginning. Containing 615.73 Acres More or Less.