



Public Service Commission

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DATE: MARCH 16, 2000
TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)
FROM: DIVISION OF LEGAL SERVICES (CHRISTENSEN)
DIVISION OF WATER AND WASTEWATER (REHWINKEL, REDEMANN)
RE: DOCKET NO. 991632-WS - APPLICATION FOR ORIGINAL
CERTIFICATE TO OPERATE WATER AND WASTEWATER UTILITY IN BAY
COUNTY BY DANA UTILITY CORPORATION.
AGENDA: 03/28/2000 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\991632R2.RCM

CASE BACKGROUND

Dana Utility Corporation (Dana or utility) was granted original Certificates Nos. 614-W and 529-S to operate a water and wastewater facility in Bay County, Florida by Order No. PSC-00-0227-FOF-WS, issued February 3, 2000. Currently, Dana has no water or wastewater facility. Dana was formed for the specific purpose of providing water and wastewater service to Lake Merial multi-use development. 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 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. Dana's parent company, Lake Merial, entered into an agreement with Fancher Management Group, Inc. (Fancher Management) to provide assessment, planning, and operational services for Dana.

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FPSC-RECORDS/REPORTING

Simultaneously with its application for original certificates, 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. These rules address the information necessary for setting initial rates and charges along with supporting engineering, operational and financial information. By Order No. PSC-00-0127-PAA-WS, issued January 14, 2000, the petition for temporary waiver of the rule was granted. (Consummating Order No. PSC-00-0309-CO-WS, issued February 15, 2000). Pursuant to Order No. PSC-00-0227-FOF-WS, the utility was ordered to file the temporarily waived rates and charges information by February 20, 2000.

On February 16, 2000, the utility filed a Motion for Extension of Time. In its motion, the utility requests a six month extension of time to file the temporarily waived rates and charges information. This motion is the subject of this recommendation.

DISCUSSION OF ISSUES

ISSUE 1: Should Dana's Motion for Extension of Time for filing of the initial rates and charges information along with supporting engineering, operational, and financial data be granted?

RECOMMENDATION: Yes. Dana's Motion for Extension of Time for filing of the initial rates and charges information along with supporting engineering, operational, and financial data should be granted. Staff further recommends that the utility establish at the time of any proposed transfer that it meets the requirements for a temporary waiver by filing a petition for temporary waiver or file the information. (CHRISTENSEN, REHWINKEL, REDEMANN)

STAFF ANALYSIS: As stated in the case background, Dana was granted original water and wastewater certificates by Order No. PSC-00-0227-FOF-WS. Dana was formed for the specific purpose of providing water and wastewater service to Lake Merial multi-use development. Currently, the utility has not constructed its water and wastewater facility. Dana is a wholly-owned subsidiary of Lake Merial. Lake Merial owns approximately 95% of the land which is Dana's service territory. Originally, Dana anticipated needing to construct its treatment facilities to accommodate a public school in its territory that would need service beginning March 1, 2000. The utility stated that if it had waited to file its application for original certificates with the information necessary to establish initial rates and charges, it would not have had sufficient time to meet its obligation to the school. Moreover, the utility required the certificates of authorization to provide water and wastewater service prior to the Department of Environmental Protection issuing construction permits. Therefore, simultaneous with its application for original certificates, 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. These rules address the information necessary for the setting of initial rates and charges along with the supporting engineering, operational, and financial information. In its petition for temporary waiver, the utility requested the waiver for a period of 120 days or until February 20, 2000, whichever date occurred first. By Order No. PSC-00-0127-PAA-WS, the petition for temporary waiver of the rule was granted. Pursuant to Order No. PSC-00-0227-FOF-WS, the utility was ordered to file the temporarily waived rates and charges information by February 20, 2000.

On February 16, 2000, the utility filed a Motion for Extension of Time. In its motion, the utility requests a six month extension of time to file the temporarily waived rates and charges information. The utility states in its motion that the current owners of the Lake Merial Development are in negotiations to sell the development and change of control of the utility. In addition, the utility states in its motion that due to the ongoing negotiations "neither the finalization of the financial and other data necessary to set initial rates nor the construction of utility facilities has begun as quickly as Dana originally anticipated."

Dana requested an informal meeting with Commission staff (staff), to discuss the circumstances described above. On February 18, 2000, staff conducted an informal meeting with the utility's attorney and the utility's manager. At this meeting, the utility represented that negotiations are expected to be completed by May 2000. Moreover, the utility stated that no further development of the lots located in the utility's service territory are expected until the completion of negotiations.

When staff inquired about the status of the utility service needed by the school, the utility's manager asserted that the school will construct its own temporary facility. Furthermore, the utility stated that the few homes which are currently located in the utility's service territory are on private wells and septic tanks and would not need service from the utility at this time.

The issue of whether to grant an extension of time for filing information temporarily waived pursuant to Section 120.542, Florida Statutes, as well as the appropriate standard to apply, is an instance of first impression for the Commission. Section 120.542(3), Florida Statutes, sets forth the statutory authority for the adoption of rules to implement granting, denying or revoking a rule waiver request. Rule 28-104.0051, Florida Administrative Code, establishes the criteria for revocation of a temporary waiver which states that:

"[u]pon receipt of evidence sufficient to show that the recipient of an order granting an ... temporary ... waiver is not in compliance with the requirements of that order, the agency shall issue an order to show cause why the ... waiver should not be revoked."

In establishing whether an extension of time should be granted for a temporary waiver, staff believes it is necessary to address whether the recipient of the temporary waiver is and will continue to be in compliance with the order which granted the waiver.

In granting the temporary waiver in this docket, the Commission applied the requirements of Section 120.542(2), Florida Statutes. In Order No. PSC-00-0127-PAA-WS, the Commission found that Dana had met the underlying purpose of Sections 367.031 and 367.045, Florida Statutes, because it demonstrated the technical and financial ability to provide service and a need for service in the area. (Id. at 6). Further, the Commission found that the utility showed that it would suffer a substantial hardship if all of the provisions of Rule 25-30.033, Florida Administrative Code, were strictly applied. (Id.).

As previously stated, the utility is seeking an extension of time on the temporary waiver because the owners of its parent company are in negotiations to sell the Lake Merial development. If these negotiations are successful, the utility asserts that a change in control of the utility will take place and it will file the appropriate application of approval by the Commission. However, the results of these negotiations are uncertain at this time. Therefore, staff believes it is appropriate to address the utility's current situation.

When the utility was granted its temporary waiver, it demonstrated that it had the financial and technical ability to provide service to the proposed area and that there was a need for service. Lake Merial signed an agreement with Dana to provide financial assistance to the utility for a period of ten years. Lake Merial 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. The negotiations have not altered the utility's financial and technical abilities to serve at this time. Fancher Management is providing technical services for the utility. Lake Merial is obligated to provide the financial backing for Dana despite the delay in construction due to the ongoing negotiations. Although the timing of need for service has been delayed, there still will be a need for service in the territory. The public school has agreed to build its own temporary facilities and is ultimately seeking service from the utility. The utility asserts that there are no other potential existing customers who need service immediately. However, once development resumes at the conclusion of the negotiations, Lake Merial's lots will need

service. Thus, the underlying circumstances which formed the basis for the temporary waiver are substantially unchanged at this time. However, staff believes that should these negotiation result in a change of ownership of the utility, the financial ability of the utility would be altered. Thus, the utility would need to establish at the time of any proposed transfer that it meets the requirements for a temporary waiver as set forth above or file the information.

For the reasons stated above, staff believes that the utility has demonstrated that it will continue to meet the requirements of Section 120.542, Florida Statutes, if the Motion for Extension of Time is granted. Therefore, staff recommends that the utility's Motion for Extension of Time for filing the information required to establish initial rates and charges along with supporting information should be granted. However, staff further recommends that the utility establish at the time of any proposed transfer that it meets the requirements for a temporary waiver by filing a petition for temporary waiver or file the information.

DOCKET NO. 991632-WS
DATE: MARCH 16, 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 for the utility.
(CHRISTENSEN)

STAFF ANALYSIS: This docket should remain open pending the completion of the filing requirements by the utility and the establishment of resulting rates and charges for the utility.