

BOARD OF COUNTY COMMISSIONERS

ORIGINAL

Office of the County Attorney

Emeline C. Acton, County Attorney
Ronald G. McCord, Chief Assistant
Donald R. Odom, Chief Assistant
James J. Porter, Chief Assistant
Jennie Granahan Tarr, Chief Assistant
Christine M. Beck, Chief Assistant
Frances (Beth) Novak, Administrator



Hillsborough County
Florida

County Center
601 E. Kennedy Blvd. -- 27th Floor

Mailing Address:
P.O. Box 1110
Tampa, Florida 33601
(813) 272-5670
Fax (813) 272-5231

May 10, 2000

Blanca Bayo, Director of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. ⁹⁹⁰⁶⁹⁶99096-WS and Docket No. 992040-WS

Dear Ms. Bayo:

Enclosed please find an original and fifteen (15) copies of Hillsborough County's *Petition for Leave to Intervene* and *Request for Oral Argument* in the above-referenced Dockets.

Please call me if you have any questions.

Sincerely

Donald R. Odom
Chief Assistant County Attorney

DRO/ch
Enclosure(s)

- AFA _____
- APP _____
- CAF _____
- CMW _____
- CTR _____
- EAG _____
- LEG 2 _____
- MAS 5 _____
- OPC _____
- RRR _____
- SEC 1 _____
- WAW _____
- OTH _____

Homey (Pet Int)

Done 5/15/00

DOCUMENT NUMBER-DATE

05880 MAY 11 8

An Affirmative Action/Equal Opportunity Employer

FPSC-RECORDS/REPORTING

RECEIVED
FLORIDA PUBLIC
SERVICE COMMISSION
MAY 11 AM 9:33
MAIL ROOM

LT1682wg/2000-623

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Docket No. ⁹⁹⁰⁶⁹⁶~~990960~~WS -Application for original certificates to operate water and wastewater utility in Duval and St. Johns Counties by Nocate Utility Corporation

And

Docket No. 992040-WS - Application for certificates to operate a water and wastewater utility in Duval and St. Johns Counties by Intercostal Utilities, Inc.

HILLSBOROUGH COUNTY'S PETITION FOR LEAVE TO INTERVENE

PETITIONER, HILLSBOROUGH COUNTY ("the County"), by and through its undersigned counsel, and pursuant to Rule 25-22.039, F.A.C., files this Petition for Leave to Intervene with the Florida Public Service Commission ("FPSC"). The County is entitled to intervene in this proceeding for the purpose of filing appropriate pleadings including Motions to Dismiss Nocate Utility Corporation's Application for original certificates in Docket No. 99096-WS and Intercostal Utilities, Inc. Application for Certificates to operate a water and wastewater utility in Duval and St. Johns Counties. Substantial interests of the County are subject to determination or will be affected through this proceeding. The County also requests the FPSC delay its hearing scheduled for May 16, 2000 to hear arguments on St. Johns County's Motion to Dismiss and grant the County until May 30, 2000 to file its Motion to Dismiss. In support of this Petition the County states as follows:

- 1. The name and address of Petitioner is:

Hillsborough County, Board of County Commissioners
c/o Donald R. Odom, Chief Assistant County Attorney
601 East Kennedy Boulevard, 27th Floor
Post Office Box 1110
Tampa, Florida 33601

2. The County is, pursuant to Section 367.171(1), *Florida Statutes (1999)*, a “non-jurisdictional” County in that the County has not relinquished its authority to regulate investor owned utilities within its borders to the FPSC.
3. The County is a Charter County.
4. A decision by the FPSC to issue an original certificate and extension of service territory certificate to serve areas located in both Duval County and St. Johns County, which is a “non-jurisdictional” county will call into question the County’s statutory right to regulate investor owned utilities within its jurisdiction. Section 367.171(1) *Florida Statutes (1999)*.
5. A decision by the FPSC to award original certificates and extension of service territory certificates within a “non-jurisdictional” county would seriously call into question the County’s ability to exercise growth management decisions within its own jurisdiction.
6. A decision by the FPSC to award original certificates in non-jurisdictional counties would seriously call into question the County’s ability to honor contractual commitments to investor owned utilities within its jurisdiction.
7. The above captioned dockets are not scheduled for administrative hearing until August 9 and 10, 2000. Therefore, granting the County additional time to file its Motion to Dismiss and delaying hearing arguments on St. Johns County’s Motion to Dismiss will not delay disposition of this consolidated docket nor cause prejudice to any of the parties.

Legal Argument

The Fifth District Court of Appeal in the case of *Florida Wildlife Federation, Inc. v. Florida Trustees of the Internal Improvement, et al.*, 707 So.2d 841, described a simple two-prong test to determine if intervention should be allowed. The Court, citing *Union Central Life Insurance Co. v. Carisle*, 593 So.2d 505 (1992) wrote: First, the Trial Court must determine that the interest asserted is appropriate to support intervention ... Once the Trial Court determines that the requisite interest exists, it must exercise its soundest discretion to determine whether to permit intervention.

The manner in which the County's substantial interests would be affected by a decision by the FPSC to grant certificates in "non-jurisdictional" counties has been enumerated above. The interest that the County has in the outcome of this matter is sufficient to support intervention. Secondly, as discussed in *Florida Wildlife Federation id.*, the Commission has the discretion to determine whether or not to allow intervention.

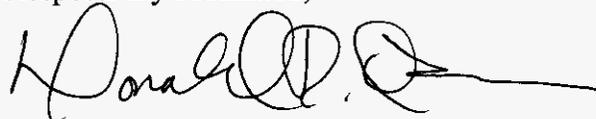
The County respectfully submits that a decision by the FPSC to grant a certificate in a "non-jurisdictional" county would have a profound affect upon the thirty nine (39) "non-jurisdictional" counties, including effectively eliminating the "non-jurisdictional" counties' ability to deny requests to provide service within their jurisdictions, honor their pre-existing franchise agreements; and regulate land use within their counties. A sound exercise of the Commission's discretion is to allow intervention in this docket. In conclusion, the Florida Supreme Court has written that:

Once the trial court determines that the requisite interest exists, it must exercise its sound discretion to determine whether to permit intervention. In deciding this question the court should consider a number of factors, including the derivation of the interest, any pertinent contractual language, the size of the interest, the potential for conflicts or new issues, and any other relevant circumstance. *Union Central Life Insurance Company v Carisle, id.* at page 508. {Emphasis added.}

The County requests the Commission to follow the Court's instructions and consider the "other relevant circumstance" in this case. Specifically, absent intervention the County will not have an opportunity to fully protect its substantial interest which will be affected through the proceeding. The totality of the circumstances in this case, including its affect upon the thirty-nine (39) "non-jurisdictional" counties, certainly warrants granting of intervention.

WHEREFORE, Hillsborough County requests that the Commission grant its Petition for Leave to Intervene and allow the County to participate in this proceeding.

Respectfully submitted,



Donald R. Odom,
Chief Assistant County Attorney
Hillsborough County, Florida
Fla. Bar No. 239496
Post Office Box 1110
Tampa, Florida 33601

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished by regular U.S. Mail on this 10th day of May, 2000, to the following persons:

Richard D. Melson, Esq.
Hopping Green Sams & Smith, P.A.
P. O. Box 6526
Tallahassee, FL 32314-6526

Suzanne Brownless, Esq.
1311-B Paul Russell Rd, Ste. 201
Tallahassee, FL 32301

Samantha Cibula, Esq.
Legal Division
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

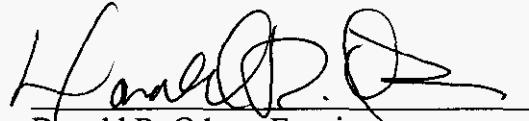
Michael J. Korn, Esq.
Korn & Zehmer
6620 Southpoint Drive, Ste. 200
Jacksonville, FL 32216

John L. Wharton, Esq.
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Michael B. Twomey, Esq.
P. O. Box 5256
Tallahassee, FL 32314-5256

J. Stephen Menton, Esq.
Rutledge, Ecenia Law Firm
215 South Monroe St., Ste.420
Tallahassee, FL 32301

Kathleen F. Schneider, Esq.
Office of the County Attorney
1660 Ringling Blvd., 2nd Floor
Sarasota, FL 34236


Donald R. Odom, Esquire