

DISTRICT COURT OF APPEAL

AUG 11 2000

FIRST DISTRICT

990696-WS

HILLSBOROUGH COUNTY,)
BOARD OF COUNTY COMMISSIONERS)
Appellant(s))

Case No. _____

v.

J. TERRY DEASON, E. LEON JACOBS, JR.,)
LILA A. JABER, SUSAN F. CLARK AND)
JOE GARCIA of the)
Florida Public Service Commission,)
Appellee(s).)

NOTICE OF APPEAL TO REVIEW NON-FINAL AGENCY ACTION

NOTICE IS GIVEN that the Board of County Commissioners of Hillsborough County, Appellant(s), appeals to the First District Court of Appeal, the Order of the Florida Public Service Commission, (in Docket No. 992040-WS, Order No. PSC-00-1265-PCO-WS) rendered on July 11, 2000. The nature of the Order is a Final Order as to Appellant, denying Appellant's Petition for Intervention.

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PETITION FOR WRIT OF CERTIORARI TO REVIEW NON-FINAL AGENCY ACTION

Appellant, HILLSBOROUGH COUNTY BOARD OF COUNTY COMMISSIONERS, in

the alternative files this Petition for Writ of Certiorari to Review Non-Final Agency Action. In

support of its Petition, Appellant states:

PARTIES AND JURISDICTION

1. Appellant is a political subdivision of the State of Florida.
2. Appellant is a Charter County.
3. Appellant is, pursuant to Section 367.171(1), *Florida Statutes* (1999), a “non-jurisdictional” county in that Appellant has not relinquished its authority to regulate investor owned utilities within its borders to the Commission.
4. The Commission is a State of Florida regulatory agency created by the Florida Legislature and charged with the regulation of public utility service including water and wastewater service within the State of Florida.
5. This Court has jurisdiction of this matter pursuant to Rule 9.100(c)(3), *Rules of Appellate Procedure*.

PROCEDURAL BACKGROUND

6. On June 1, 1999, Nocatee Utility Corporation (NUC) filed an application for original certificates to provide water and wastewater service to a proposed development that will be located in Duval and St. Johns Counties known as Nocatee. According to the application, NUC proposed to provide service to the Nocatee development through a bulk water, wastewater, and reuse agreement with Jacksonville Electric Authority (“JEA”).
7. On June 30, 1999, Intercoastal Utilities, Inc. (Intercoastal) timely filed a protest to NUC’s application and requested a formal hearing. In its protest, Intercoastal stated that it had an application pending before the Board of County Commissioners of St. Johns County, requesting authority to provide service to the area in NUC’s application located in St. Johns County.

9. On September 7, 1999, St. Johns County issued an order denying Intercoastal's application to expand its territory to serve the area in the Nocatee development located in St. Johns County and the other area requested in Intercoastal's application. The order of the Board of County Commissioners denying Intercoastal's application is currently pending on appeal.
9. On December 30, 1999, Intercoastal filed an application requesting an amendment of certificates to provide water and wastewater service to the Nocatee development; to extend its service area in St. Johns County; and for original certificates for its existing service area. While Intercoastal's application before the Board of County Commissioners of St. Johns County only included the area in NUC's application located in St. Johns County, the application pending before the Florida Public Service Commission (Commission) includes the entire Nocatee development. NUC, its parent company, DDI, JEA, and Sawgrass Association, Inc., filed objections to Intercoastal's application, and they all requested a hearing.
10. St. Johns County filed a Petition to Intervene in this matter which was granted by the Commission by Order, issued February 17, 2000. This matter is currently scheduled for hearing before the Commission.
11. On January 24, 2000, NUC and DDI filed a joint Motion to Dismiss Intercoastal's application based on the doctrines of res judicata and collateral estoppel. On January 26, 2000, St. Johns County also filed a Motion to Dismiss Intercoastal's application, stating that the Commission does not have jurisdiction over the application based on Section 367.171, *Florida Statutes*, and based on doctrines of res judicata and collateral estoppel.
12. On May 10 and 11, 2000, Sarasota County and Appellant respectively, filed Petitions for Intervention in these dockets, requesting the opportunity to file Motions to Dismiss based

on the argument that the Commission lacks jurisdiction under Section 367.171, *Florida Statutes*, to consider Intercoastal's and NUC's applications.

13. On May 15, 2000, Collier and Citrus Counties filed a Petition for Intervention, and Alternative Petitions for Declaratory Statement, for Initiation of Rulemaking, and for Permission to Submit Amicus Curiae Motion on Jurisdiction.
14. On May 23, 2000, Appellant and Sarasota Counties timely filed their Motions to Dismiss and Collier and Citrus Counties timely filed their joint Motion to Dismiss. On June 2, 2000, NUC and DDI withdrew their joint Motion to Dismiss Intercoastal's application.
15. The Commission at its June 19, 2000 Special Agenda Conference heard arguments of counsel on the Appellant, Sarasota County, Collier County, and Citrus Counties' Motions to Intervene and to Dismiss.
16. On July 11, 2000 the Commission entered an order denying Appellant, Sarasota County, Collier County, and Citrus Counties' Motions to Intervene and to Dismiss.


PETITION FOR CERTIORARI

17. Appellant requests certiorari review of the Commission's denial of Appellant's Motion to Intervene.
18. Granting of certificates by the Commission in this case will establish a precedent which will result in substantial injury to Appellant by depriving Appellant of its statutory authority to regulate investor owned water and wastewater systems within its borders.
19. The denial of Appellant's Motion to Intervene caused material injury to Appellant throughout the proceedings below, leaving no adequate remedy on appeal from the Commission's order.
20. The Commission departed from the essential requirements of law by denying Appellant's

Motion to Intervene, since Appellant has a sufficient interest in this case to warrant intervention.

21. Absent intervention Appellant will not have an opportunity to fully protect its substantial interests which will be affected through the proceeding below.
22. Although the Commission granted amicus curiae status to the counties, Appellant remains without an adequate remedy on appeal from any final order entered by the Commission due to Appellant's current lack of standing to file an appeal.
23. The Commission departed from the essential requirements of law by not applying the law in the case of *Florida Wildlife Federation Inc. v Florida Trustees of the International Improvement*, 707.S0.2d 841 (Fla 5th DCA)

WHEREFORE, Appellant respectfully requests this Court enter an Order granting Appellant's Petition for Writ of Certiorari to Review Non-Final Agency Action.



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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 9 day of August, 2000, to the following persons:

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