

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement by Florida Water Services Corporation that proposed provision of emergency backup water service to residences in St. Johns County by the Flagler County systems of Florida Water Services Corporation does not constitute service which transverses county boundaries under Section 367.171(7), F.S.

DOCKET NO. 010113-WS
ORDER NO. PSC-01-0882-DS-WS
ISSUED: April 6, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

By the Commission:

BACKGROUND

Pursuant to Section 120.565, Florida Statutes (2000), Florida Water Services Corporation (Florida Water or petitioner) filed a petition for declaratory statement on January 26, 2001, concerning the applicability of Section 367.171(7), Florida Statutes, to its provision of emergency backup water service for approximately 15 residences located on the beach side area in southeast St. Johns County. St. Johns County Utilities has requested this backup service from Florida Water's Flagler County Systems. The service will be provided through construction of a six-inch waterline from Florida Water's northernmost point of delivery in Flagler County.

DOCUMENT NUMBER-DATE

04280 APR-06

FPSC-RECORDS/REPORTING

Both of the aforementioned utilities are exempt from our regulatory jurisdiction. The petition affirms that St. Johns County operates its own utility, exempt pursuant to Section 367.022, Florida Statutes. Florida Water's Flagler County Systems are exempt because Flagler County is a "non-jurisdictional" county pursuant to Section 367.171(3), Florida Statutes.

Under the proposed arrangement, St. Johns County Utilities will construct and own the portion of the interconnection line in St. Johns County that will provide backup service and will provide all billing and collection services in St. Johns County. The service will be provided pursuant to St. Johns County Utilities policies and rules. The Florida Water Flagler County Systems will own the lines up to the meter that will be installed at the Flagler County/St. Johns County boundary. The Florida Water Flagler County Systems will continue to provide collection and billing activities only for customers in Flagler County. Florida Water will not provide direct retail service to any active customer connections in St. Johns County. No customer connection charges, customer installation fees, developer agreements, or other contractual arrangements will exist between Florida Water and any customers in St. Johns County, nor will Florida Water own any lines or appurtenant facilities there.

Petitioner Florida Water requests a declaratory statement to the effect that, under these facts, the proposed emergency interconnect does not constitute service which tranverses county boundaries so as to invoke our jurisdiction pursuant to Section 367.171(7), Florida Statutes. The Flagler County Interim Regulatory Authority is said to have concurred in this request.

DISCUSSION

It is appropriate that we issue a declaratory statement concerning the status of this emergency interconnect pursuant to Section 367.171(7). Section 120.565(1) provides:

any substantially affected persons may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

Florida Water's concern as to whether its provision of emergency backup service by means of the interconnect described above would invoke our jurisdiction pursuant to Section 367.171(7), Florida Statutes, is properly the subject of a declaratory statement petition pursuant to Section 120.565, Florida Statutes.

It is also appropriate that we grant the declaratory statement requested by Florida Water. We have previously described the legislative intent of Section 367.171(7):

. . . to eliminate the regulatory problems that exist when utility systems provide service across political boundaries and are subject to economic regulations by two or more regulatory agencies (i.e., Counties, Cities, or Commission).

In re: Petition of General Development Utilities, Inc. for Declaratory Statement Concerning Regulatory Jurisdiction over its Water and Sewer System in DeSoto, Charlotte, and Sarasota Counties, Order 22459, 90 F.P.S.C. 1:396 (1990). Under the facts of this case, however, Florida Water will only serve customers in Flagler County and be subject to Flagler County's regulation.

The described emergency interconnect will not invoke our jurisdiction pursuant to Section 367.171(7), Florida Statutes, because service transversing county boundaries is not involved. That conclusion is consistent with In re: Petition of St. Johns Service Company for Declaratory Statement on Applicability and effect of 367.171(7), F.S., 99 F.P.S.C. 10:155 (1999). Therein, we stated that delivery by St. Johns Service Company of bulk water to two homeowner associations in Duval County at a point of delivery in St. Johns County did not constitute service transversing county boundaries which would invoke our jurisdiction pursuant to Section 367.171(7). As in this case, the petitioner therein did not own any lines or appurtenant facilities on the homeowners' side of the delivery point and had no contractual agreements with any customers there beside the bulk water agreement. As noted in Town of Jupiter v. Village of Tequesta, 713 So. 2d 429 (Fla. 4th DCA 1998),

providing Tequesta with bulk potable water at a point of delivery does not, in our opinion, constitute actual

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operation by Jupiter within Tequesta's consumer service area.

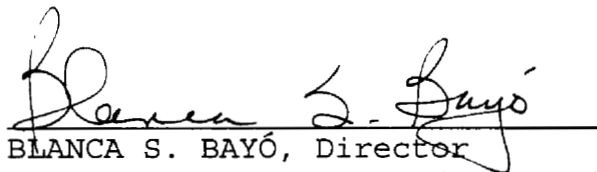
Similarly, since Florida Water has no direct relationship with actual consumers in St. Johns County, petitioner does not provide service in St. Johns County. Therefore, the emergency backup service interconnect described above between Florida Water and St. Johns Utilities does not render Florida Water Flagler County Systems subject to our jurisdiction. The provisions of Section 367.171(7), Florida Statutes, are not applicable here because Florida Water Flagler County Systems is not a utility system whose service transverses the boundary of Flagler and St. Johns Counties.

In view of the above, it is

ORDERED that the petition for declaratory statement by Florida Water Services Corporation is granted. It is further

ORDERED that this docket is closed.

By Order of the Florida Public Service Commission this 6th day of April, 2001.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.