

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment
of Certificate No. 106-W to add
territory in Lake County by
Florida Water Services
Corporation.

DOCKET NO. 991666-WU
ORDER NO. PSC-01-1448-PHO-WU
ISSUED: July 6, 2001

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on June 26, 2001, in Tallahassee, Florida, before Commissioner Braulio L. Baez, as Prehearing Officer.

APPEARANCES:

J. STEVE MENTON, ESQUIRE, Post Office Box 551,
Tallahassee, Florida 32302
On behalf of Florida Water Services Corporation.

SUZANNE BROWNLESS, ESQUIRE, 1311-B Paul Russell Road,
#201, Tallahassee, Florida 32301-4860
On behalf of the City of Groveland.

PATRICIA A. CHRISTENSEN, ESQUIRE, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

On November 3, 1999, Florida Water Services Corporation (FWSC or utility) filed an application for amendment of Certificate No. 106-W to add territory in Lake County. The City of Groveland (City) timely filed a protest to the application on November 24,

DOCUMENT NUMBER-DATE

08289 JUL-60

FPSC-RECORDS/REPORTING

1999. By Order No. PSC-00-0623-PCO-WU (Order Establishing Procedure), issued April 3, 2000, this matter had been set for an administrative hearing on December 11 and 12, 2000.

On October 27, 2000, the parties filed a Joint Motion for Extension of Time to File Rebuttal Testimony and Joint Motion for Continuance of the hearing dates. By Order No. PSC-00-2096-PCO-WU, issued November 6, 2000, the hearing dates were changed to March 13 and 14, 2001, the prehearing date was changed to March 1, 2001, and other key activity dates were consequently changed. By Order No. PSC-01-0279-PCO-WU, issued January 31, 2001, the hearing dates were changed to March 15 and 16, 2001. Pursuant to Order No. PSC-01-0395-PCO-WU, issued February 16, 2001, the prehearing conference and hearing dates were changed to June 25, 2001, and July 11 and 12, 2001, respectively. In addition, by Order No. PSC-01-0395-PCO-WU, the discovery cutoff date was changed to June 18, 2001. By Order No. PSC-01-1287-PCO-WU, issued June 13, 2001, the prehearing conference date was changed to June 26, 2001, and the discovery cutoff date was extended to July 3, 2001.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapters 367 and 120, Florida Statutes. This prehearing conference will be governed by said Chapters 367 and 120, Florida Statutes, and Rules 25-30, 25-22, and 28-106, Florida Administrative Code.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the

information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided

to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Commission Clerk and Administrative Services' confidential files.

V. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

VI. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the

witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VII. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
John Tillman	FWSC	1,2,3,4,5,7,9,10, 11A,11B,12
James Perry	FWSC	2
Jason L. Yarborough	City of Groveland	6,7,9,10,11A,11B,12
Joseph A. Mittauer	City of Groveland	1,4,7,10,11A,11B,12
Brenda Winningham	Staff	1,5,8
<u>Rebuttal</u>		
John Tillman	FWSC	4,6,7,10,11A,12
Greg A. Beliveau	City of Groveland	5,8,10,12

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Supplemental Rebuttal</u>		
John Tillman	FWSC	1,5,7,9,11A

VIII. BASIC POSITIONS

FWSC: This docket involves Florida Water's application to provide water service to a new development in Lake County known as the Summit. Florida Water has entered into an agreement with the developer of the Summit to provide water services to the requested territory. Florida Water is already providing water service to an adjoining territory, the Palisades Country Club, that was developed by an affiliated company of the developer of the Summit. Florida Water is the most appropriate utility to provide water service to the requested territory. Approval of Florida Water's application would allow for full utilization of the existing Palisades system and would avoid wasteful duplication of facilities. Florida Water will be able to provide the necessary services in the most economical manner. The City of Groveland (the "City") has intervened in this docket in opposition to Florida Water's application.

The City claims that the requested territory is within an exclusive service area designated by the City pursuant to Section 180.02, Florida Statutes. Florida Water denies that the City has an exclusive right to provide water service to the requested territory. Service by the City would be more costly, would not meet the time frames needed by the developer and would result in unnecessary duplication of the existing Florida Water Palisades system.

CITY: The City of Groveland has the prior right to serve FWSC's proposed service area and can provide the area with both water and wastewater service in a timely and adequate manner. Extension of FWSC's certificate to include the proposed service area will constitute a duplication of existing utility services and is prohibited by §367.045

(5) (a), Florida Statutes. Service by the City is both consistent with the City's Comprehensive Plan and the Joint Planning Area proposed by Lake County pursuant to Lake County's Comprehensive Plan. FWSC's application for extension in this docket should be denied.

STAFF: Non-testifying staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Non-testifying staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

The information gathered through discovery and prefiled testimony indicates, at this point, that there is a need for service in the area requested by Florida Water Service Corporation in its application. However, non-testifying staff does not have a position pending further development of the record on whether Florida Water Service Corporation's application for amendment of Certificate No. 106-W to add territory in Lake County should be granted. Testifying staff's positions are set forth in Issues 1, 5, and 8.

IX. ISSUES AND POSITIONS

ISSUE 1: When will service be required in the territory proposed by Florida Water Services Corporation's application?

POSITIONS

FWSC: The Developer of the requested territory has a current need for water service. This need can best be met by Florida Water through extensions from the existing facilities in the neighboring Palisades development. Florida Water has already entered into an agreement with the developer of the Summit to meet this need. There is no indicated need for wastewater service at this time. (Tillman)

CITY: Yes, there is a need for service in the area requested. The developer of the Palisades subdivision originally requested service to commence by July 1, 2000 however this date has been now been rescheduled to a later date. The Developer has not yet requested any construction permits from the County. (Mittauer)

STAFF: No position pending further development of the record on the time when service will be required. (Winningham)

ISSUE 2: Proposed stipulation.

ISSUE 3: Proposed stipulation.

ISSUE 4: Does Florida Water Services Corporation have the plant capacity to serve the requested territory?

POSITIONS

FWSC: Florida Water has the plant capacity to serve the requested territory. Florida Water's existing facilities in the neighboring Palisades has sufficient capacity to meet the anticipated needs of the Summit. Florida Water has reserved sufficient capacity from its existing Palisades water treatment plant to provide service to the requested area. (Tillman)

CITY: Florida Water Services Corporation (FWCS) has indicated that it will provide water from its Palisades water treatment plant permitted for 1.15 MGD. The City is unclear how much demand has been calculated as required for the Summit development at issue in this docket. Exhibit D of the application indicates that 135,000 gpd will be needed. Mr. Sweat's testimony indicates that 38,400 gpd will be needed. Using the higher figure of Exhibit D, when growth is taken into account, a new water supply well will be needed within three years to adequately supply both the existing and proposed development within the service territory. (Mittauer)

STAFF: Yes. Florida Water Service Corporation has the plant capacity to serve the requested territory.

ISSUE 5: Is Florida Water Services Corporation's application consistent with the local comprehensive plan?

POSITIONS

FWSC: Yes. Florida Water has been advised by the developer of the Summit that the necessary approvals have been received to proceed with this planned unit development. These approvals include the developer's design of a utility system based upon the use of septic tanks and water service from Florida Water. (Tillman)

CITY: No. Service by FWCS of the City of Groveland's utility service district established by Ordinance 99-05-07 is inconsistent with the City's Comprehensive Plan Intergovernmental Coordination Element 95-5.015(3) Policy 7-1.8.1 and the proposed Joint Planning Area (JPA) for Lake County. (Beliveau)

STAFF: Yes. Florida Water Service Corporation's application is consistent with the local comprehensive plan. (Winningham)

ISSUE 6: Does the City of Groveland have the financial ability to serve the requested territory?

POSITIONS

FWSC: It is unclear whether the City of Groveland has the financial ability to serve. It is not clear how the City proposes to provide service to the Summit nor is it clear how the City plans to finance the substantial costs of the design, permitting and construction of the lines required to bring the City's water and sewer service to the property. (Tillman)

CITY: Yes. (Yarborough)

STAFF: Yes, based on the September 30, 1999 Annual Financial Statement, the City of Groveland has the financial ability to serve the requested territory.

ISSUE 7: Does the City of Groveland have the technical ability to serve the requested territory?

POSITIONS

FWSC: It is unclear whether the City has the capacity or ability to serve the requested territory. Service by the City will require extensive line extensions and, depending upon the final route, may require traversing sensitive environmental areas. (Tillman)

CITY: Yes. (Yarborough, Mittauer)

STAFF: The City of Groveland is in compliance with the rules of the Department of Environmental Protection, and the St. Johns River Water Management District. However, the City's technical ability is limited at this time by the lack of lines built to serve the area.

ISSUE 8: Is the City of Groveland's proposal to serve the area consistent with the local comprehensive plan?

POSITIONS

FWSC: Based upon the testimony provided by the Department of Community Affairs, it appears that service by the City may not be consistent with the Lake County Comprehensive Plan. At a minimum, the City's efforts to extend its facilities beyond its boundaries raises a great deal of concern regarding compliance with the long-term planning efforts for the County.

CITY: Yes. The proposed service area falls completely within the Utilities Service District established by Ordinance 99-05-07 and is consistent with the City's own Comprehensive Plan as well as the Joint Planning Area proposed for Lake County pursuant to Lake County's Comprehensive Plan. (Beliveau)

STAFF: No. The area at issue is not specifically identified in the City's Comprehensive Plan as a potential service area. (Winningham)

ISSUE 9: What is the landowner's service preference and what weight should the Commission give to the preference?

POSITIONS

FWSC: The landowner clearly prefers service by Florida Water as reflected by the Developer's Agreement with Florida Water. This preference is entitled to considerable weight and reflects the economic benefits that would be accomplished by allowing Florida Water to provide the requested water service. (Tillman)

CITY: The landowner requested service from FWCS in October of 1999 apparently unaware that the Summit development was located completely within the City's established Utilities Service District. It is established Florida case law that, where adequate and timely service is available as is this case, landowners cannot select their own utility service provider. Storey v. Mayo, 217 So.2d 304 (Fla. 1968). (Yarborough)

STAFF: The Commission should consider case law in determining how much weight to give to the landowner's service preference. Pursuant to Storey v. Mayo, 217 So. 2d 304, 307-8 (Fla. 1968), the Supreme Court held, "An individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself."

ISSUE 10: Will the extension of Florida Water Services Corporation's territory in Lake County duplicate or compete with the City of Groveland's utility system?

POSITIONS

FWSC: No. In order for the City to provide water service to the Summit development, it will need to run lines approximately 2 ½ miles from the City's existing point of terminus to the Garden City subdivision and then a second extension of approximately 2 ½ miles to the Summit development for a total extension length of over 26,000 feet or approximately 5 miles. Florida Water has

existing lines situated immediately adjacent to the Summit development in Florida Water's current certificated territory that includes the Palisades. The City's provision of services to the Summit would be an unnecessary duplication of the system and facilities currently available through Florida Water's Palisades system. (Tillman)

CITY: Yes. (Mittauer, Yarborough, Beliveau)

STAFF: No. Based on the information received to date, it does not appear that the extension of Florida Water Services Corporation's territory in Lake County duplicates or competes with the City of Groveland's utility system.

ISSUE 11A: If the granting of the territory which Florida Water Services Corporation seeks to add to its PSC Certificate would result in an extension of a system which would be in competition with, or a duplication of the City of Groveland's system or portion of its system, is the City of Groveland's system inadequate to meet the reasonable needs of the public or is the City unable, refusing or neglecting to provide reasonably adequate service to the proposed territory?

POSITIONS

FWSC: Florida Water does not believe that granting the requested territory would result in an extension of a system which would be competition with or duplication of the City's system. The City does not have a system in place that can meet the needs of the requested area. The City's proposed plans and/or desires to serve the area are not a basis for denying Florida Water's application. Moreover, extension of the City's system to serve the Summit would be an unnecessary and time-consuming effort. (Tillman)

CITY: No, the City of Groveland has both the technical and financial ability to provide adequate and

timely water service to the Summit. Further, the City would also be able to provide centralized sewer services to the development. (Mittauer, Yarborough)

STAFF: No position pending further development of the record.

ISSUE 11B: Does the Commission have the statutory authority to grant an extension of service territory to Florida Water Service Corporation which will be in competition with, or a duplication of, the City of Groveland's system(s), unless factual findings are made that the City's system(s) or portion thereof is inadequate to meet the reasonable needs of the public or that the City is unable, refuses, or has neglected to provide reasonably adequate service to the proposed service territory?

POSITIONS

FWSC: Florida Water believes the Commission has the authority to grant the requested territory extension. Florida Water does not believe that granting the requested territory would result in an extension of a system which would be in competition with or duplication of the City's system. Florida Water also contests the City's interpretation of the effect of the exclusive service district created by the City. (Tillman)

CITY: No. Section 367.045(5)(a), Florida Statutes, prohibits the Commission from granting a certificate for modification of FWSC's certificate in this case. (Mittauer, Yarborough)

STAFF: No. Section 367.045(5)(a), Florida Statutes, states that [t]he commission may not grant a certificate of authorization for a proposed system, or an amendment to a certificate of authorization for the extension of an existing system, which will be in competition with, or a duplication of, any

other system or portion of a system, unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service.

ISSUE 12: Is it in the public interest for Florida Water Services Corporation to be granted an amendment to Water Certificate No. 106-W for the territory proposed in its application?

POSITIONS

FWSC: It is in the public interest for the Commission to grant Florida Water the territory it has requested. Granting the Application will allow for extension of water service to the requested area in a timely, economical manner. Florida Water has the plant capacity to serve the immediate needs for service in the requested territory in accordance with the developer's plans. Granting the Application will allow Florida Water to better utilize existing facilities and will eliminate the need for the expenditure of public funds to service the requested area. (Tillman)

CITY: No. The City of Groveland has a prior right to provide water and sewer service to the Summit and the technical and financial ability to provide both water and sewer utility services to the development in a timely manner. Extension of FWSC's certificate in this case will duplicate the City's existing water services and is prohibited under Section 367.045 (5) (a), Florida Statutes. (Yarborough, Mittauer, Beliveau)

STAFF: No position pending further development of the record. Public interest considerations may include, but are not limited to, the services provided to customers, the rates and charges to customers and planning and policy considerations.

X. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
John Tillman (adopted prefiled testimony of Charles L. Sweat)	FWSC	CLS-1	Florida Water's Application for extension of service area in Lake County
		CLS-2	Florida Water's Agreement with the developer of the Summit
John Tillman	FWSC	JLT-1	Resume
James Perry	FWSC	JAP-1	Florida Water's audited balance sheet and income statement for year-end 1999.
Jason L. Yarborough	City	JLY-1	Resume
		JLY-2	Ord. 99-05-07

ORDER NO. PSC-01-1448-PHO-WU
DOCKET NO. 991666-WU
PAGE 16

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Jason L. Yarborough	City	JLY-3	City of Groveland Annual Financial Report 9/30/99
		JLY-4	Water Monthly Service Rates, Water Service Availability Charges
Joseph A. Mittauer	City	JAM-1	Resume
		JAM-2	City Service area map
		JAM-3	Water System Extension Map
		JAM-4	12/10/96 DEP letter
		JAM-5	1/16/97 DEP letter
		JAM-6	Consent order letter 2/18/97
Brenda Winningham (adopted prefiled testimony of Charles Gauthier)	Staff	CRG-1	Resume - Gauthier
		CRG-2	DCA Letter
		BW-1	Resume - Winningham

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Rebuttal</u>			
Greg A. Beliveau	City	GAB-1	Resume
		GAB-2	Groveland Comprehensive Plan Public Facilities Element
		GAB-3	Joint Planning Interlocal Agreement Between Lake County & the Municipali- ties of Lake County

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

XI. PROPOSED STIPULATIONS

1. There is a need for service in the territory proposed by Florida Water Services Corporation's application.

2. Florida Water Services Corporation has the financial ability to serve the requested territory.

3. Florida Water Services Corporation has the technical ability to serve the requested territory.

XII. PENDING MOTIONS

There are no pending motions.

XIII. PENDING CONFIDENTIALITY MATTERS

There are no confidential matters pending.

XIV. RULINGS

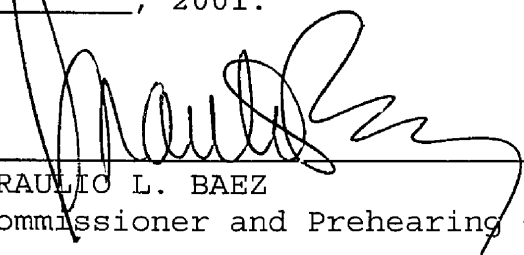
1. Staff's Motion to Late-File Exhibit BW-1, filed May 25, 2001, is hereby granted.

2. Opening statements, if any, shall not exceed ten minutes per party.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 6th day of July, 2001.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

PAC

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

ORDER NO. PSC-01-1448-PHO-WU
DOCKET NO. 991666-WU
PAGE 19

hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.