



Public Service Commission

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COMMISSION CLERK

DATE: NOVEMBER 20, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (BRADY, REDEMANN, JONES) OFFICE OF THE GENERAL COUNSEL (CHRISTENSEN) *pb ppr* *JDJ*

RE: DOCKET NO. 991632-WS - APPLICATION FOR ORIGINAL CERTIFICATE TO OPERATE WATER AND WASTEWATER UTILITY IN BAY COUNTY BY DANA UTILITY CORPORATION AND APPLICATION FOR DELETION OF TERRITORY AND CANCELLATION OF CERTIFICATES NOS. 614-W AND 529-S.
COUNTY: BAY

AGENDA: 12/02/2002 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

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

CASE BACKGROUND

Dana Utility Corporation (Dana or utility) was granted original Certificates Nos. 614-W and 529-S to operate water and wastewater facilities in Bay County in this docket by Order No. PSC-00-0227-WS-FOF-WS, issued February 3, 2000. Dana is located in an area of the Northwest Florida Water Management District which is not a water resource caution area. Currently, Dana has no utility facilities, customers, or revenues.

Dana is a wholly owned subsidiary of Lake Merial Development Company, Inc. (Lake Merial) and was formed for the purpose of providing water and wastewater service to Lake Merial's proposed multi-use development in Bay County. Lake Merial owns approximately 2,100 acres or 95% of the land originally proposed to

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be served by Dana. The remainder of the land was donated by Lake Merial to the Bay County School Board for the construction of the Deane Bozeman Learning Center (public school).

Simultaneous with its application for original certificates, the utility filed a petition for temporary waiver of Rule 25-30.033(1)(h), (k), (m), (o), (t), (u), (v), (w); (2); (3); and (4), Florida Administrative Code. The rule addresses the information necessary for setting initial rates and charges along with the supporting engineering, operational and financial information.

By Order No. PSC-00-0127-PAA-WS, issued January 14, 2000, the utility's petition for temporary waiver of the rule was granted. Pursuant to the subsequent Order No. PSC-00-0227-FOF-WS, which granted the utility's certificates, Dana was ordered to file the temporarily waived rates and charges information by February 20, 2000. On February 16, 2000, the utility instead filed a Motion for Extension of Time.

At the March 28, 2000, Agenda Conference on the Motion, the Commission expressed concerns regarding the utility's inability to meet the public school's need for service. As a consequence, the Commission deferred ruling on the Motion pending further staff inquiry. Staff was directed to inform the Department of Community Affairs (DCA) and Department of Environmental Protection (DEP) of the proposed delay in service and seek each agency's comments. Further, staff was directed to address the possibility of cancelling the utility's certificates of authorization along with a recommendation on the appropriateness of initiating a show cause against the utility for failure to provide service to the public school.

The Commission's decision on the results of staff's inquiries was set forth in Order No. PSC-000-1376-PCO-WS, issued July 31, 2000. In the order, the Commission affirmed that the DCA had not identified any growth management concerns related to the consistency of the utility's motion with Bay County's comprehensive plan. And, while the DEP had already issued construction permits, the order indicated that DEP could either revoke or modify the permits to dry-line permits based upon the Commission's determination regarding the utility's certificates. With regard to the need for service, the order indicated that the public school had chosen to construct its own facilities and there were no other service needs identified at that time. In addition, the order

clarified that Lake Merial's parent company was in the process of negotiating a possible sale of the Lake Merial property and, as a result, all development had been suspended.

Based on the above information, the Commission granted the utility's Motion for Extension of Time until August 20, 2000, to file information necessary to establish initial rates and charges. And, while the Commission also declined to initiate revocation or show cause proceedings at that time, the order put the utility on notice that failure to meet the August 20, 2000, filing date would result in the initiation of revocation proceedings.

On August 18, 2000, the utility filed the required application for initial rates and charges in this docket. However, the resulting rates and charges were, in staff's opinion, inordinately high. Staff had a series of conversations with the utility in which staff expressed concerns regarding the reasonableness of the proposed rates and charges. After each conversation, the utility was given the opportunity to modify its data. However, because the utility's parent was still not ready to proceed with construction of the development, there was little incentive to invest the time and resources necessary to modify the filing. In addition, the utility allowed its construction permits with the DEP to elapse.

By letter dated December 12, 2001, staff inquired of the utility whether any basis for certificates still existed. By letter filed January 15, 2002, the utility concurred that no basis existed and offered to voluntarily tender its certificates. By letter dated March 11, 2002, staff provided the utility with application and instructions for filing for a deletion of its service territory and cancellation of its certificates. On August 19, 2002, a supplemental application for deletion of territory was filed in this docket. No protests to the notice of application were received by the Commission and the time for filing such has expired.

This recommendation addresses the utility's request to delete its service territory and cancel its certificates. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Dana Utility Corporation's application to delete its service territory and cancel Certificates Nos. 614-W and 529-S?

RECOMMENDATION: Yes. The utility's request to delete its service territory and to cancel Certificates Nos. 614-W and 529-S should be granted without prejudice. The effective date of the cancellation of certificates should be the date of Commission vote. The utility should be responsible for filing regulatory assessment fees for 2002, on or before March 31, 2003, as required by Rule 25-30.120(2)(a), Florida Administrative Code. (BRADY, REDEMANN, JONES, CHRISTENSEN)

STAFF ANALYSIS: On August 19, 2002, the utility filed an application to delete its service territory and to cancel its certificates. As indicated in the Case Background, Dana has no utility facilities, customers, or revenues.

The application meets the requirements of Section 367.045(2), Florida Statutes, and Rule 25-30.036(4), Florida Administrative Code. In addition, the utility filed the appropriate filing fees pursuant to Rule 25-30.020, Florida Administrative Code, and fulfilled the noticing requirements pursuant to Rule 25-30.030, Florida Administrative Code. No protests to the application were received by the Commission and the time for filing such has expired.

Rule 25-30.036(4) (c), (d), and (e), Florida Administrative Code, requires modified system maps, number of active connections, and modified territory maps, respectively. Since the territory to be deleted represents all of Dana's service area, a modified territory map was not necessary. The utility already has a territory map on file in the docket. As noted above, there are no active connections in the territory proposed to be deleted. Since the utility had not yet begun construction, modified system maps do not apply. The utility already has proposed system maps on file in the docket. For informational purposes, a description of the territory proposed to be deleted is appended to this memorandum as Attachment A.

Rule 25-30.036(4) (f), (g), and (h), Florida Administrative Code, requires statements specifying the reason for the proposed

deletion of territory, why the proposed deletion is in the public interest, and the effect of the proposed deletion on the ability of current and potential customers to receive water and wastewater service. The application indicated that, although Dana's parent was no longer seeking to sell the Lake Merial property, it was in the process of changing the entire development plan which would require a new Development Agreement with Bay County. Under these circumstances, the application indicated it would be some time before construction could commence. Since the reason for Dana's original request for certificates no longer exists, the utility wished to voluntarily tender its certificates for cancellation. Since no customers are currently being served, the territory deletion will have no effect on existing service. And, since there can be no future customers without development, the territory deletion will have no effect on potential customers, either. Staff notes that the public school has its own system and will be unaffected. Under these circumstances, staff believes there is no public interest served by keeping Dana's certificates active.

Rule 25-30.036(4) (i), (j), (k), and (l), Florida Administrative Code, requires tariff sheets reflecting the revised service area, return of the utility's original certificate(s), the number of the most recent order by the Commission establishing or changing rates and charges, and an affidavit that the utility has tariffs on file with the Commission. Since the Commission has never established rates and charges for Dana, there are no orders on rates and charges nor any tariffs on file. However, Dana did return its original certificates for cancellation.

Rule 25-30.036(4)(l), Florida Administrative Code, also requires an affidavit that the utility has annual reports on file with the Commission. Since the utility has no facilities, customers, or revenues, it has been filing the minimum annual report and regulatory assessment fees (RAFs) required by Rules 25-30.110 and 25-30.120, Florida Administrative Code, respectively. Staff has confirmed that the utility is current on annual reports and RAFs through 2001.

Pursuant to Rule 25-30.110(3), Florida Administrative Code, the obligation to file an annual report applies to any utility which is subject to the Commission jurisdiction as of December 31, 2002. If the Commission approves Dana's application for cancellation of its certificates, then Dana will not be

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jurisdictional as of December 31, 2002, and will not have an obligation to file a 2002 annual report.

Pursuant to Rule 25-30.120(2), Florida Administrative Code, the obligation to remit RAFs applies to any year in which the utility is subject to this Commission's jurisdiction. Since Dana has been jurisdictional during 2002, staff believes it is appropriate for Dana to file the minimum annual RAFs of \$25 per service, \$50.00 total, for 2002, on or before March 31, 2003, as required by Rule 25-30.120(2)(a), Florida Administrative Code.

In summary, staff recommends that the Commission approve Dana Utility Corporation's request to delete its entire service territory and cancel Certificates Nos. 614-W and 529-S without prejudice. The effective date of the cancellation of certificates should be the date of Commission vote. The utility should be responsible for filing regulatory assessment fees for 2002, on or before March 31, 2003, as required by Rule 25-30.120(2)(a), Florida Administrative Code.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. Since no further action is necessary, this docket should be closed. (CHRISTENSEN)

STAFF ANALYSIS: Since no further action is necessary, this docket should be closed.

DANA UTILITY CORPORATION

TERRITORY DESCRIPTION

WATER AND WASTEWATER SERVICE AREA

BAY COUNTY

PARCEL I: Commence at the Northwest Corner of Section 15, Township 1 South, Range 14 West, Bay County, Florida. Thence S01°12'22"W along the West line of said Section 15 for 409.73 feet to the centerline of construction of a Gulf Power Company easement (100 foot wide), described in Deed Book 116, 105, in Public Records of Bay County, Florida, for the Point of Beginning. Thence S51°03'38"E along the centerline of construction of said Gulf Power Company Easement for 930.87 feet; thence S01°12'45"W for 2478.33 feet to the centerline of a dirt road; thence N73°10'07"W along said centerline for 243.01 feet; thence N74°46'38"W along said centerline for 517.31 feet to said West line of Section 15; thence N01°12'22"E along said West line for 2857.26 feet to the Point of Beginning.

PARCEL II: Section 16, Township 1 South, Range 14 West, Bay County, Florida.

LESS AND EXCEPT: Commence at the Northeast Corner of Section 16, Township 1 South, Range 14 West, Bay County, Florida. Thence N88°14'33"W along the North line of said Section 16 for 536.30 feet to the centerline of construction of a Gulf Power Company easement (100 foot wide), as described in Deed Book 116, Page 105, of the Public Records of Bay County, Florida. Thence continue N88°14'33"W along said North line of Section 16 for 708.58 feet to the Point of Beginning. Thence S03°49'15"E for 1341.86 feet; thence North 88°57'07"W for 4147.18 feet to the West line of said Section 16; thence N01°03'36"E along said West line for 1386.96 feet to the Northwest corner of said Section 16; thence S88°14'32"E along the North line of said Section 16 for 4033.49 feet to the Point of Beginning.

ALSO LESS AND EXCEPT: Begin at the Northeast Corner of Section 16, Township 1 South, Range 14 West, Bay County, Florida. Thence N88°14'33"W along the North line of said Section 16 for 536.30 feet

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to the centerline of construction of a Gulf Power Company Easement, described in Deed Book 116, Page 105, of the Public Records of Bay County, Florida. Thence S51°03'38"E along said centerline of construction for 678.09 feet to the East line of said Section 16; thence N01°12'22"E along said East line for 409.73 feet to the Point of Beginning.

PARCEL III: The West Half of the Northeast Quarter of the Northwest Quarter; the South Half of the Northwest Quarter; the Southwest Quarter; the Northwest Quarter of the Southeast Quarter; the East Half of the Southeast Quarter; the South Half of the Northeast Quarter; Section 17, Township 1 South, Range 14 West.

LESS AND EXCEPT: Commence at the Northeast Corner of Section 16, Township 1 South, Range 14 West, Bay County, Florida. Thence N88°14'33"W along the North line of said Section 16 for 1244.88 feet; thence S03°49'15"E for 1341.86 feet; thence N88°57'07"W for 4147.18 feet to the East line of Section 17, Township 1 South, Range 14 West, for the Point of Beginning. Thence continue N88°57'07"W for 1979.26 feet to the West line of the East Half of the Southwest Quarter of the Northeast Quarter of said Section 17; thence N00°55'34"E along said West line for 42.04 feet to the North line of the South Half of the Northeast Quarter of said Section 17; thence S89°50'45"E along said North line for 1979.60 feet to the East line of said Section 17; thence S01°03'36"E along said East line for 72.92 feet to the Point of Beginning.

PARCEL IV: That portion of Section 19, Township 1 South, Range 14 West, Bay County Florida, East of State Road No. 77.

PARCELS V, VI & VII: Begin at the Southwest Corner of Section 20, Township 1 South, Range 14 West, in Bay County, Florida; thence North 89°33'17" East along the South line of Section 20 for 1275.18 feet; thence South 01°20'42" West for 1318.19 feet; thence North 89°47'31" East for 1584.08 feet to the Westerly right of way line of Prosper Drive; thence Northeasterly along said right of way line; the following courses and distances: North 19°30'31" East for 986.23 feet, North 19°50'23" East for 424.25 feet, North 18°52'36" East for 617.29 feet; thence North 20°16'54" East for 446.84 feet, North 23°48'30" East for 392.90 feet; North 28°50'30" East for 582.69 feet, North 32°39'03" East for 506.28 feet, North 33°26'17" East for 1587.99 feet, North 33°26'17" East for 917.70 feet, North 32°07'37" East for 487.21 feet, North 36°44'20" East for 540.58 feet to the North line of Section 21, Township 1 South, Range 14

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West in Bay County, Florida; thence departing said Westerly right of way line, bear North $87^{\circ}47'21''$ West along the North line of said Section 21 for 1023.11 feet to the Northwest Corner of said Section 21; thence South $89^{\circ}54'31''$ West for 1313.66 feet; thence South $89^{\circ}54'26''$ West for 1313.76 feet; thence South $89^{\circ}54'46''$ West for 2,627.49 feet to the Northwest Corner of Section 20, Township 1 South, Range 14 West in Bay County, Florida; thence South $00^{\circ}35'42''$ West for 5254.18 feet to the Southwest Corner of said Section and the Point of Beginning. Containing 615.73 Acres More or Less.