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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of Certificate No. 347-W to add territory in Marion County by Marion Utilities, Inc.

DOCKET NO.: 961531-WU

FILED: 3-4-97

MOTION TO DISMISS OBJECTION TO CERTIFICATE AMENDMENT

Marion Utilities, Inc. (MUI) pursuant to Commission Rule 25-22.037(2), hereby files this its motion to dismiss as untimely the objection of DECCA Utilities (DECCA). As grounds, MUI states as follows:

1. On December 19, 1996, pursuant to Section 367.045, Florida Statutes, MUI gave legal notice to required persons of its application for an amendment of its Water Certificate No. 347W to add territory located in Marion County. In addition this legal notice was duly published on that same date in the Ocala Star-Banner, a daily newspaper published at Ocala in Marion County. As required by Commission Rule 25-30.030, the legal notice provided in pertinent part as follows:

. . . An objection to said application must be made in writing within thirty (30) days from this date to the Director, Division of Reporting, Florida Public Service Commission, 2540 Shumard Oaks Boulevard, Tallahassee, Florida 32399-0850.

2. Pursuant to Section 367.045(3), Florida Statutes, and Commission Rule 25-30.031 and the provisions of the notice, any objections to the application were due on Tuesday January 21, 1997.1

1Thirty days from the date of the Legal Notice actually fell on Saturday, January 18, 1997. Under Commission Rule 25-22.028, the due date is the next working day, which was Tuesday, January

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FPSC-RECORDS/REPORTING

FLORIDA PUBLIC SERVICE COMMISSION

INSTRUCTIONS FOR PREPARATION OF TERRITORY DESCRIPTION AND MAP

An accurate description of the territory served or proposed to be served is essential. The noticing requirement in Rule 25-30, Florida Administrative Code, and the territory description requirement for each of the certification applications require the territory to be described using township, range and land sections. Failure to use the required format will cause your application to be delayed and may result in your having to renotice. The following information is provided to assist you in preparing a correct legal description and plotting that territory on the service territory map.

TERRITORY DESCRIPTION

The territory description must contain the following:

- 1) A reference to a township(s), range(s), land section(s) and county.
- 2) A complete and accurate description of the territory served or proposed to be served. There are two acceptable formats which may be used.
 - a) Sections - If the territory includes complete sections, the description may only include the township, range, and section reference. If the territory includes partial sections, the description shall either identify the subsections included or excluded.
 - b) Metes and Bounds - A point of beginning which is referenced from either a section corner or a subsection corner, such as a quarter corner. The perimeter shall be described by traversing the proposed territory and closing at the point of beginning. Also, the description shall include all bearings and distances necessary to provide a continuous description.
- 3) References to interstates, state roads, and major bodies of water are acceptable.
- 4) References to government lots, local streets, recorded plats or lots, tracts, or other recorded instruments are not acceptable.

Acceptable territory description formats are shown in the attached Examples 1 and 2.

Territory maps are required in the Florida Administrative Code rules related to applications for original certificates, amendments, grandfather certificates, and in transfers to a governmental agency where only a portion of the territory is transferred. The map is used by staff to verify the location of the existing or proposed territory. The territory maps should not be confused with the system depiction map which is used to locate existing or proposed service lines and facilities.

TERRITORY MAP

The territory map shall contain the following:

- 1) Territory shall be plotted on a Department of Transportation Map, County tax assessor map or any other map with a scale of 1"= 200 ft. or 1" = 400 ft.
- 2) Township, range, section, and county.
- 3) An accurate depiction of the existing or proposed territory. The map should clearly distinguish the existing versus the proposed territory.

An example of a acceptable territory map is attached as Example 3.

FORMAT TO BE FOLLOWED IN PREPARING TERRITORY DESCRIPTIONS. EXAMPLE 1 IS PREFERRED OVER METES AND BOUNDS IN EXAMPLE 2.

EXAMPLE 1

Township 26 South, Range 29 East, Osceola County, Florida

Section 18

The South 1/2 of the Southeast 1/4 and the South 1/2 of the North 1/2 of the Southeast 1/4 of said Section 18

also

The East 1/2 of the Southeast 1/4 of the South West 1/4 and the Southeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of said Section 18

Section 19

The North 1/2 of the Northeast 1/4 and the North 1/2 of the South 1/2 of the Northeast 1/4 of said Section 19

also

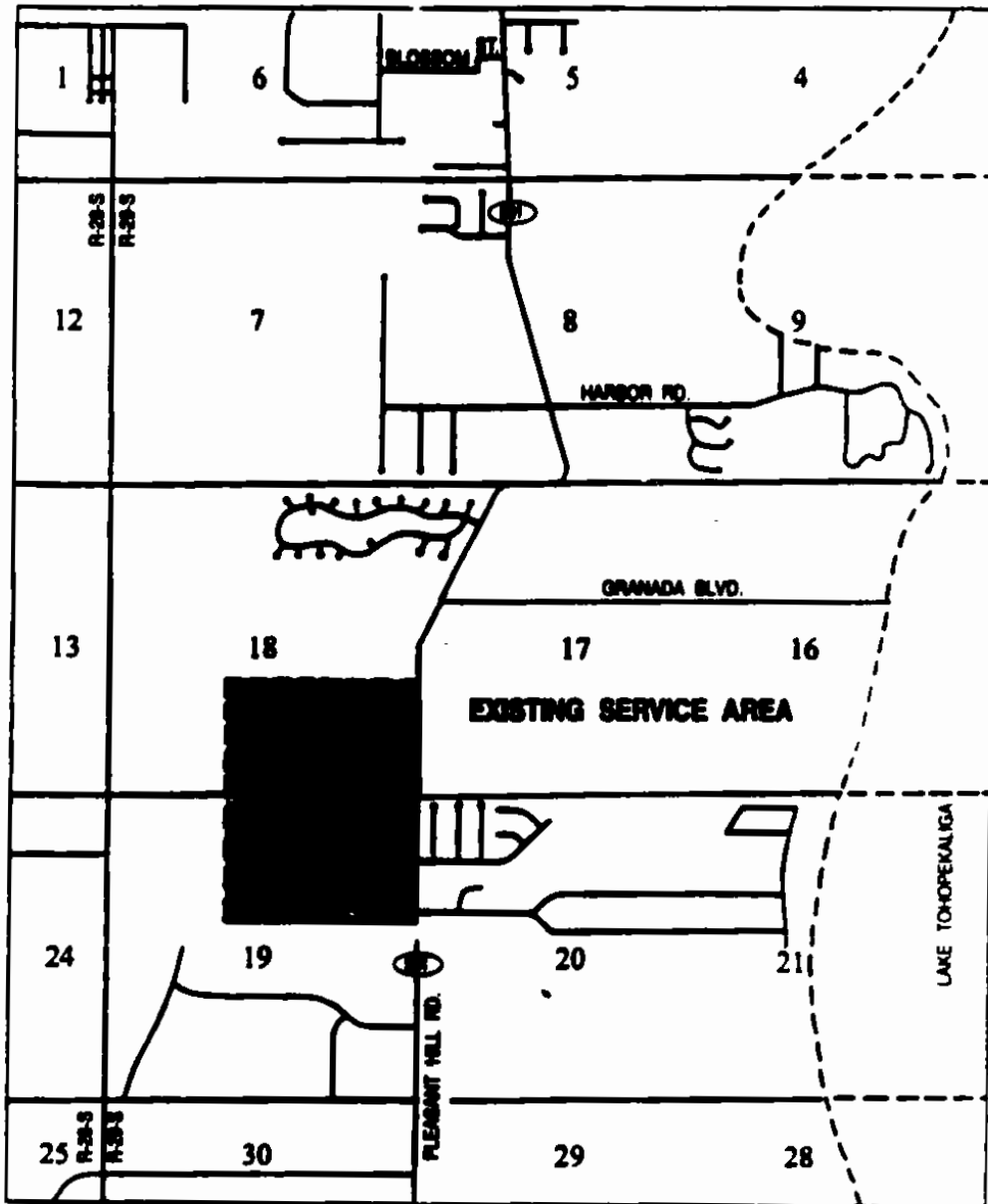
The East 1/2 of the Northeast 1/4 of the Northwest 1/4 and the Northeast 1/4 of the Southeast 1/4 of the Northwest 1/4 of said Section 19

EXAMPLE 2

A portion of Section 18 and 19, Township 26 South, Range 29 East, Osceola County Florida; being more particularly described as follows: Commencing at the SE corner of Section 18, this point also being the Point of Beginning; thence run due south along the east line of Section 19 a distance of 1980 feet to a point; thence run due west a distance of 2706 feet to a point; thence run due north a distance of 3960 feet to a point; thence run due east a distance of 2706 feet to a point of east line of Section 18; thence run due south along the east line of Section 18 a distance of 1980 feet to the Point of Beginning.

EXAMPLE 1

TOWNSHIP 26 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA



 EXISTING SERVICE AREA

 PROPOSED SERVICE AREA

USE
FILE

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3. On December 24, 1996, MUI filed its application with the Florida Public Service Commission.

4. On Wednesday January 22, 1997, Berryman & Henigar, as "Representative Agent" for DECCA Utilities, filed a ". . . letter as a formal objection . . ." to MUI's application. This objection was not timely made as required by the notice and by Commission Rule 25-30.031, i.e., it was filed 34 days after the notice. The objection of DECCA should therefore be dismissed and MUI's application handled without a hearing as contemplated under Section 367.045(3), Florida Statutes.

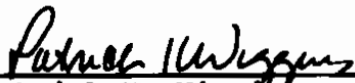
5. The Commission can appropriately review and evaluate MUI's application without an adversarial hearing. No other person allegedly affected by MUI's application has objected to the proposed extension, and nothing alleged in DECCA's objection requires a hearing for the Commission to evaluate MUI's straightforward application. Allowing DECCA's untimely objection to trigger a hearing would not enhance the quality of the Commission's review, but would only increase the cost of this proceeding to MUI and the Commission.

CONCLUSION

For the reasons stated above, MUI requests the Commission to dismiss the objection of DECCA as untimely filed and to handle MUI's application without hearing.

21st, because Monday January 20th was a State holiday (Martin Luther King Day). Thus, those opposed to MUI's proposed amendment had 33 days in which to timely file objections.

Respectfully submitted, this 4TH day of March 1997.



Patrick K. Wiggins
Wiggins & Villacorta, P.A.
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Suite B
Tallahassee, Florida 32302
(904) 222-1534

Attorney for Marion Utilities, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 4th day of March, 1997, to the following:

Tim Vaccaro
Division of Legal Service
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Berryman & Henigar
Chuck Pigeon
1414 SW M.L. King, Jr. Avenue
Ocala, FL 34474-3129

Decca Utilities, a Division of Decca
8865 S.W. 104th Lane
Ocala, FL 34481-8961


Patrick K. Wiggins