

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application by Dana)
 Utility Corporation for) Docket No. 991632-KIS
 Original Certificates for Water)
 & Wastewater Service in Bay) Filed: October 20, 1999
 County, Florida)
 _____)

PETITION FOR TEMPORARY VARIANCE
 FROM OR TEMPORARY WAIVER OF RULES 25-30.033
 (1) (h), (k), (m), (o), (t), (u), (v), (w);
 (2); (3) and (4) Florida Administrative Code

Dana Utility Corporation (Dana), by and through its undersigned attorneys and pursuant to Section 120.542, Florida Statutes, hereby petitions the Florida Public Service Commission (the Commission) for a temporary variance or waiver, for 120 days, of certain requirements of Rule 25-30.033, Florida Administrative Code, as specifically identified below. In support of its petition, Dana states:

1. The name, address, telephone number, and facsimile number of Dana Utility Corporation are as follows:

Dana Utility Corporation
 13100 State Road 77
 Southport, Florida 32409
 (850) 271-0120 telephone
 (850) 271-1412 facsimile

2. The name, address, telephone number and facsimile number of the attorneys representing Dana in this matter are as follows:

Richard D. Melson
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3. Rules 25-30.033(1) (h), (k), (m), (o), (t), (u), (v), (w); (2); (3) and (4) implement Sections 367.031 and 367.045(1), Florida Statutes. These sections require that certain information necessary to set initial rates for a utility be submitted as part of its application for an original certificate. As set forth in more detail below, Dana requests a temporary waiver or variance of these rules to permit the information necessary for rate-setting to be filed 120 days after the submission of the balance of its certification application.

BACKGROUND

4. Lake Merial Development Company, Inc. (Lake Merial), the parent company of Dana, owns approximately 95% of the land (approximately 2,100 acres) included within the boundary of the territory proposed to be served by Dana under the application for original certificates filed in this docket. The remaining land has been dedicated to the Bay County School Board for the construction of a public school to serve the Sand Hills area. Lake Merial intends to develop this land as a multi-use development pursuant to a Development Agreement entered into with Bay County on February 2, 1999.

5. Under the Development Agreement, Lake Merial is required to provide central water and wastewater service to the development and to donate a school site to the Bay County School Board. The school site has been donated and the Deane Bozeman Learning Center for grades K-8 is now under construction. The

school will require utility service beginning on or about March 1, 2000.

6. Due to the lack of central utility service from other providers in the area, Lake Merial filed applications for construction permits for water and wastewater treatment plants with the Florida Department of Environmental Protection (DEP) in order to meet its obligation to provide central utility service. During the DEP review process for these applications, Lake Merial became aware that obtaining water and wastewater certificates from the Commission is a prerequisite to DEP's issuance of the construction permits. Lake Merial therefore created Dana Utility Corporation as a wholly-owned subsidiary for the specific purpose of providing water and wastewater service to its development.

ORIGINAL CERTIFICATE APPLICATION

7. Concurrently with this Petition for Temporary Variance or Temporary Waiver, Dana has filed its application for original certificates for water and wastewater service in Bay County. Dana believes that its application contains the information necessary for the Commission to make a decision on whether or not to grant original certificates to Dana. Specifically, the application addresses the financial and technical ability of the applicant to provide service, addresses the need for service in the area involved, demonstrates that there is no duplication of service with any existing utility, and shows that certification would be consistent with the local comprehensive plan of Bay County. Thus, Dana believes that the application as submitted

provides all the information necessary to achieve the fundamental purposes of the underlying statutes, which are to allow certification of investor-owned water and wastewater utilities which are financially and technically viable and otherwise capable of satisfying the need for service within designated areas, while avoiding the certification of utilities which may be in competition with or duplicate other utility systems or which may otherwise violate local comprehensive planning.

8. Dana's application as submitted requests the issuance of original certificates only, and does not request the establishment of initial rates. By acting separately on the certification application, the Commission will enable Dana to obtain its DEP construction permits in a time frame that meets the needs of the development.

9. Dana did not request the establishment of initial rates because the effort required to finalize and submit the information necessary to set those rates would have delayed the filing of the certification application by approximately 120 days. This delay in filing in turn would delay (i) Commission action on the certificate application; (ii) issuance of DEP construction permits; and (iii) construction of the water and wastewater plants. If construction is delayed, then Lake Merial and Dana would be unable to provide service to the Deane Bozeman Learning Center by March 1, 2000.

WAIVER REQUEST

10. Dana therefore seeks a waiver to permit Dana to submit its request for initial rates and charges, and the financial, engineering and operating information supporting such request, at a later date through a separate application. Although the Commission has traditionally required the information for certification and for initial rates and charges to be filed concurrently, bifurcated consideration by the Commission, first of certification, and, subsequently, of initial rates and charges, has been an accepted manner of processing such applications. See Order No. PSC-98-1374-PCO-WS (October 12, 1999) granting a similar waiver request filed by Ocala Springs Utilities, Inc. See also Order No. 18817 (February 8, 1988), which accepted bifurcation, Order No 19428 (June 6, 1988), which granted certification, and Order No. 23341 (August 10, 1990), which established initial rates and charges, for Sunray Utilities, Inc. The appropriateness of this procedure is further borne out by Section 367.031, Florida Statutes, which requires the Commission to grant or deny an application for certification within 90 days after the official filing date of the completed application, unless an objection thereto is filed. No statutory time periods govern the approval of initial rates and charges.

11. The specific rule requirements pertaining to initial rates and charges for which Dana seeks a waiver or variance (or a partial waiver or variance) are as follows:

a) Rule 25-30.033(1) (h)

The number of equivalent residential connections (ERCs) proposed to be served by meter size and customer class. Dana has provided information on total ERCs, but requests a temporary waiver to permit it to submit the information by meter size and customer class at a later date.

b) Rule 25-30.033(1) (k)

Copies of a sample tariff, containing all rates, charges, rules and regulations.

c) Rule 25-30.033(1) (m)

A detailed system map showing the location of the proposed lines, treatment facilities, and territory proposed to be served.

d) Rule 25-30.033(1) (o)

A statement regarding the separate capacities of the proposed lines and treatment facilities, in terms of ERCs, and gallons per day.

e) Rule 25-30.033(1) (t)

A cost study, including customer growth projections supporting the proposed rates, charges and service availability charges.

f) Rule 25-30.033(1) (u)

A schedule showing the projected cost of the proposed systems by uniform system of accounts (USOA) account numbers and the related capacity of each system in ERCs and gallons per day.

g) Rule 25-30.033(1) (v)

A schedule showing the projected operating expenses of the proposed system by USOA account numbers when 80% of the designed capacity of the system is being utilized.

h) Rule 25-30.033(1) (w)

The projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches

80% of the designed capacity of the system(s). Dana has submitted a Master Service Agreement which contains Lake Merial's agreement to provide initial funding for the utility and a Utility Loan Commitment which provides support for that funding obligation.

i) Rule 25-30.033(2)

Information on alternative rate structures, if any.

j) Rule 25-30.033(3)

Information on alternative returns on common equity, if any.

k) Rule 25-30.033(4)

Authorization to accrue allowance for funds used during construction (AFUDC).

12. As stated above, Dana does not seek a permanent waiver or variance from these rule requirements. Instead, Dana simply requests that submission of a separate application for initial rates and charges, and the financial, engineering and operating information supporting same, be deferred for 120 days, or until February 20, 2000.

13. The temporary waiver or variance is necessary since the strict application of the foregoing rules would create a substantial hardship to Dana and its affiliated companies. Without the waiver or variance, Lake Merial and Dana would be unable to obtain original certificates in the time frame needed to support construction of the water and wastewater plants to meet the March 1, 2000 date for commencing service to the Deane Bozeman Learning Center. In addition, Lake Merial intends to have a substantial number of lots ready for service in the summer of

2000. Any delay in the construction of the plants could jeopardize meeting this target date.

14. Approval of the temporary waivers or variances of the foregoing rules, as requested herein, would avoid this substantial hardship while ensuring that the purposes of the underlying statute to provide the Commission with all the information needed to make a certification decision will be achieved. Since the information for which the waiver is requested relates only to the setting of initial rates -- which is distinct from the certification decision -- granting the requested waiver is fully consistent with the underlying statute.

WHEREFORE, Dana Utility Corporation requests that the Commission grant the temporary waivers or variances requested in the body of this Petition.

RESPECTFULLY SUBMITTED this 20th day of October, 1999.

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