

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for )  
amendment of Certificates Nos.)  
27-W and 24-S in Lee County by) DOCKET NO. 911203-WS  
FLORIDA CITIES WATER COMPANY- ) ORDER NO. PSC-92-0974-FOF-WS  
Lee County Division. ) ISSUED: 09/10/92  
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

ORDER AMENDING CERTIFICATES TO INCLUDE ADDITIONAL  
TERRITORY, TO DELETE CERTAIN TERRITORY,  
AND CLOSING DOCKET

BY THE COMMISSION:

Florida Cities Water Company (Florida Cities or utility) is a Class A utility providing water and wastewater service for two separate service areas in Fort Myers, Florida. The North Fort Myers system is the only system under consideration in this proceeding. Florida Cities provides water and wastewater service to approximately 2,500 customers in North Fort Myers. This represents service to approximately 3,474 Equivalent Residential Connections (ERCs). According to Florida Cities' 1991 annual report, its North Fort Myers wastewater system had net operating revenues of \$831,946 and a net operating income of \$16,241. The annual report for 1991 shows that the annual operating revenues for the combined North and South water system are \$7,867,693 and the net operating income was \$3,112,042. The utility is in an area that has been designated by the South Florida Water Management District as a critical use area. The utility currently disposes its effluent into the Caloosahatchee River and pursuant to its consumptive use permit will be required to dispose of its effluent by means of reuse.

On December 13, 1991, the utility applied to this Commission for an amendment to Certificates Nos. 27-W and 24-S in order to extend and delete its service territory in Lee County. The Southwest Florida Regional Planning Council (Planning Council)

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filed a timely objection to the application. On April 9, 1992, the Planning Council withdrew its objection to the amendment stating that the utility's application was consistent with its Regional Comprehensive Policy Plan.

Except for serving customers outside its certificated area, the application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. The application contains a check in the amount of \$1,800 which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. Florida Cities has provided evidence that it owns the land upon which the utility's facilities are located as required by Rule 25-30.036(1)(d), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(1)(e), (f) and (i), Florida Administrative Code. A description of the territory requested to be amended and deleted by the utility is appended to this Order as Attachment A. In addition, the utility has rewritten its entire legal description to include the old and new territory. This description includes the territory granted in previous orders and the territory for this amendment. The rewritten description is appended to this Order as Attachment B and will be included in the utility's tariff. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, stating that it has tariffs and annual reports on file with the Commission.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. As stated previously, an objection to the utility's application was filed by the Planning Council, but was subsequently withdrawn.

The utility proposes to extend its water and wastewater service areas and to delete some portions of its current water and wastewater territories. The need for service is demonstrated by requests by Barrett Park. The utility proposes to delete some areas because these areas are currently being served by Lee County. Since Florida Cities does not currently serve any of the areas proposed to be deleted, the deletion will not affect any of Florida Cities' customers.

To determine if the utility has capacity to serve the additional territory, we have contacted the Lee County Health Department and the Florida Department of Environmental Regulation (DER). Currently there is sufficient water treatment plant capacity. The wastewater treatment plant has a current capacity of 1.08 million gallons per day (mgd). However, this capacity will be reduced to 1.0 mgd once the operational permit becomes effective June 1, 1993. In 1991 the average annual flow was .955 mgd. Therefore, because there will be only .045 mgd of capacity left, we were concerned with the utility's limited wastewater capacity.

On June 12, 1992, the utility submitted its projected schedule for anticipated modifications to increase the plant capacity from 1.0 mgd to 1.5 mgd. According to these projected schedules, the modifications of the wastewater plant are scheduled to be completed by September, 1993. We contacted DER and learned that Florida Cities is subject to a consent order. Pursuant to the consent order, Barrett Park can connect to the current wastewater treatment plant. Therefore, the utility can serve the proposed customers, and it will have additional wastewater plant capacity in the near future.

Florida Cities is a multi-county, sophisticated utility which has been in the water and wastewater utility business since 1965, and it has demonstrated the technical expertise and financial ability to provide its customers with quality service.

Florida Cities has been serving customers outside of its certificated territory since approximately 1976. Subsection 367.045(2), Florida Statutes, provides that a utility may not extend its service outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the Commission. While the utility has violated this provision by serving customers outside its certificated territory, we do not believe that a show cause proceeding is appropriate at this time.

Florida Cities asserts that, because of confusing and poorly written territory descriptions in which many portions of its territories are described only as particular subdivisions, the utility inadvertently believed that the subdivisions were included in its service territory. In addition, many of these violations occurred under previous management. Moreover, the utility has, of

its own volition, requested to correct these violations by filing the instant proceeding to amend its territory.

The utility's approved water rates and charges were effective December 11, 1986, pursuant to Order No. 16918, issued in Docket No. 851007-WU. The utility's approved wastewater rates were effective July 31, 1992, pursuant to Order No. PSC-92-0594-FOF-SU, issued in Docket No. 910756-SU. Service availability charges became effective January 21, 1986, pursuant to Order No. 15568, issued in Docket No. 840160-WU. The utility has indicated that the proposed amendment will have no significant impact on its existing rates and charges. Pursuant to Rule 25-9.004, Florida Administrative Code, we find that Florida Cities shall apply its existing rates and charges to the customers in the new service territory.

Based on the foregoing, we find that it is in the public interest to grant Florida Cities Water Company's request to amend Water Certificate No. 27-W and Wastewater Certificate No. 24-S to add the territory described in Attachment A. Further, we find it is in the public interest to amend Florida Cities' current water and wastewater territories by the deletion of certain portions as described in Attachment A. The utility has filed revised tariff sheets incorporating the additional territory and has returned its certificates for entry reflecting the additional territory.

Based upon the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Certificates Nos. 27-W and 24-S, held by Florida Cities Water Company-Lee County Division, P.O. Box 21119, Sarasota, Florida 34276-4119, are hereby amended to include certain territory and delete other territory, as described in Attachment A of this Order. Attachment B represents a rewrite of the utility's entire certificated territory, including this amendment. These attachments, by reference, are incorporated herein. It is further

ORDERED that the customers in the territory added herein shall be charged the existing rates and charges in the utility's tariff until changed by the Commission. It is further

ORDERED that Docket No. 911203-WS is hereby closed.

By ORDER of the Florida Public Service Commission this 10th  
day of September, 1992.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

by: Kay Flynn  
Chief, Bureau of Records

RG

Commissioner Laredo dissented on Issue 2.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 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 or sewer 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.



FLORIDA CITIES WATER COMPANY

ADDITION OF WATER FRANCHISE

Section 8, Township 44 South, Range 24 East.

From the northeast corner of said Section 8 run south along the east line of said section for 40.00 feet to the south right-of-way line of C.R. 78A and the Point of Beginning.

From said Point of Beginning continue south along said section line for 905.00 feet; thence run west 50.00 feet; thence run S 63° W for 120.00 feet; thence run S 88° W for 120.00 feet; thence run N 67° W for 470.00 feet; thence run north for 740.00 feet to an intersection with the southwesterly right-of-way line of C.R. 78A; thence run east for 686 feet, more or less, to the Point of Beginning.

Bearings hereinabove mentioned are assumed based on holding the east line of said Section 8 to bear south.

ADDITION OF WATER & WASTEWATER FRANCHISE

Section 4, Township 44 South, Range 24 East.

The SE-1/4 of SW-1/4 of SW-1/4, The South 1/2 of the NW-1/4 of SE-1/4 and The South 1/2 of the South 1/2 of the North 1/2 of the NW-1/4 of SE-1/4.

Section 10, Township 44 South, Range 24 East.

The South 3/4 of Section 10, lying west of the following described line:

From the south quarter (S-1/4) corner of said Section 10 run N 00° 30' 19" W for 3,583 feet, more or less; thence run N 05° 01' 03" E for 1,770 feet, more or less, to the north quarter (N-1/4) corner of said Section 10 and the end of said line.

Bearings are assumed based on the north-south quarter section line to bear N 01° 17' 40" E.

The South 3/4 of Section 10, lying east of Hancock Creek - excepting that part lying south of the north half (N-1/2) of the north half (N-1/2) of the south half (S-1/2) of the northeast quarter (NE-1/4) lying easterly of Hancock Creek, thereof.

FLORIDA CITIES WATER COMPANY

Section 15, Township 44 South, Range 24 East.

All of the west half (W-1/2) of Section 15 lying northerly of the Caloosahatchee River - excepting the W-3/4 of the northwest quarter (NW-1/4) thereof.

All that part of the northeast quarter (NE-1/4) of Section 15 being described as follows:

From the northwest corner of said northeast quarter (NE-1/4) run East along the north line of said Section 15 for 1219.20 feet; thence run S 00° 30' 00" W for 221.70 feet to the Point of Beginning.

From said Point of Beginning run East for 250 feet, more or less, to the waters of the Caloosahatchee River; thence run southerly along the meandering of said river for 650 feet, more or less; thence run West along a line parallel to the first call for 200 feet, more or less, to a point that is 650 feet south of the Point of Beginning along a bearing of S 00° 30' 00" W; thence run N 00° 30' 00" E for 650.00 feet to the Point of Beginning.

Bearings are assumed based on the north line of Section 15 to East.

ADDITION OF WASTEWATER FRANCHISE

Section 3, Township 44 South, Range 24 East.

All of the South 1/2 of the SW-1/4 lying south of Hancock Creek - excepting the SE-1/4 of the SE-1/4 of the SW-1/4 thereof

AND

All of the East 1/2 of the North 1/2 of the SW-1/4 lying south of Hancock Creek - excepting that part of the E-1/2 of the SE-1/4 of the NE-1/4 of the SW-1/4 lying south of Hancock Creek.

Section 4, Township 44 South, Range 24 East.

The South 1/2 of the SE-1/4, The South 1/2 of the NE-1/4 of SE-1/4 and The SE-1/4 of SW-1/4, Excepting the NW-1/4 of the SE-1/4 of SW-1/4.

FLORIDA CITIES WATER COMPANY

Section 10, Township 44 South, Range 24 East.

The North 1/4 of Section 10, lying west of the following described line:

From the south quarter (S-1/4) corner of said Section 10 run N 00° 30' 19" W for 3,583 feet, more or less; thence run N 05° 01' 03" E for 1,770 feet, more or less, to the north quarter (N-1/4) corner of said Section 10 and the end of said line.

All of Section 10, lying west of Hancock Creek and lying east of the following described line:

From the south quarter (S-1/4) corner of said Section 10 run N 00° 30' 19" W for 3,583 feet, more or less; thence run N 05° 01' 03" E for 1,770 feet, more or less, to the north quarter (N-1/4) corner of said Section 10 and the end of said line.

Bearings are assumed based on the north-south quarter section line to bear N 01° 17' 40" E.

Section 15, Township 44 South, Range 24 East.

All that part of the northeast quarter (NE-1/4) lying northwesterly of the Caloosahatchee River - Excepting the following described parcel of land lying in said northeast quarter (NE-1/4) of Section 15. From the northwest corner of said northeast quarter (NE-1/4) run East along the north line of said Section 15 for 1219.20 feet; thence run S 00° 30' 00" W for 221.70 feet to the Point of Beginning.

From said Point of Beginning run East for 250 feet, more or less, to the waters of the Caloosahatchee River; thence run southerly along the meandering of said river for 650 feet, more or less; thence run West along a line parallel to the first call for 200 feet, more or less, to a point that is 650 feet south of the Point of Beginning along a bearing of S 00° 30' 00" W; thence run N 00° 30' 00" E for 650.00 feet to the Point of Beginning.

Bearings are assumed based on the north line of Section 15 to East.



REDUCTION OF WATER FRANCHISE

Section 4, Township 44 South, Range 24 East.  
The NW-1/4 of SE-1/4 of SW-1/4.

REDUCTION OF WATER AND WASTEWATER FRANCHISE

Section 9, Township 44 South, Range 24 East.  
The W-1/2 of the W-1/2 of NW-1/4 (City of Cape Coral).

Section 11, Township 44 South, Range 24 East.  
From the northwest corner of Section 11 run east along the north line of said section for 1,200 feet, more or less, to the Point of Beginning.  
From said Point of Beginning run S 38° E for 550 feet, more or less; thence run east for 850 feet, more or less; thence run south for 900 feet, more or less; thence run S 38° E for 350 feet, more or less; thence run south for 350 feet, more or less; thence run S 40° E for 600', more or less; to the waters of the Caloosahatchee River; thence run N 25° E along said meandering waters for 450 feet, more or less; thence run N 43° W for 850 feet, more or less; thence run north for 1,450 feet, more or less, to the north line of said Section 11; thence run west along said north line for 1,500 feet, more or less, to the Point of Beginning.  
Bearings hereinabove mentioned are assumed, based on the north line of said Section 11 to bear east.

Florida Cities Water Company  
Lee County Water  
North Service Territory

IN TOWNSHIP 44 SOUTH, RANGE 24 EAST:

Section 3:

All of the south half (S-1/2) of the southwest quarter (SW-1/4) lying south of Hancock Creek, excepting the southeast quarter (SE-1/4) of the southeast quarter (SE-1/4) of the southwest quarter (SW-1/4) thereof.

All of the east half (E-1/2) of the north half (N-1/2) of the southwest quarter (SW-1/4) lying south of Hancock Creek, excepting that part of the east half (E-1/2) of the southeast quarter (SE-1/4) of the northeast quarter (NE-1/4) of the southwest quarter (SW-1/4) lying south of Hancock Creek.

Section 4:

The south half (S-1/2) of the southeast quarter (SE-1/4).

The south half (S-1/2) of the north half (N-1/2) of the southeast quarter (SE-1/4).

The south half (S-1/2) of the south half (S-1/2) of the north half (N-1/2) of the northwest quarter (NW-1/4) of the southeast quarter (SE-1/4).

The southeast quarter (SE-1/4) of the southwest quarter (SW-1/4) of the southwest quarter (SW-1/4).

The southeast quarter (SE-1/4) of the southwest quarter (SW-1/4), excepting the northwest quarter (NW-1/4) of the southeast quarter (SE-1/4) of the southwest quarter (SW-1/4).

Florida Cities Water Company  
Lee County Water  
North Service Territory

IN TOWNSHIP 44, RANGE 24 EAST:

Section 8:

From the northeast corner of said Section 8 run south along the east line of said section for 40.00 feet to the south right-of-way line of C.R. 78A and the Point of Beginning. From said Point of Beginning continue south along said section line for 905.00 feet; thence run west 50.00 feet; thence run S 63° W for 120.00 feet; thence run S 88° W for 120.00 feet; thence run N 67° W for 470.00 feet; thence run north for 740.00 feet to an intersection with the southwesterly right-of-way line of C.R. 78A; thence run east for 686 feet, more or less, to the Point of Beginning.

Bearings hereinabove mentioned are assumed based on holding the east line of said Section 8 to bear south.

Section 9:

All of the section, excepting the west half (W-1/2) of the west half (W-1/2) of the northwest quarter (NW-1/4). (City of Cape Coral).

Section 10:

All of the section, excepting the north half (N-1/2) of the northeast quarter (NE-1/4) lying east of Hancock Creek.

Florida Cities Water Company  
Lee County Water  
North Service Territory

IN TOWNSHIP 44, RANGE 24 EAST:

Section 11:

All that portion of Section 11, being described as follows: Beginning at the northwest corner of Section 11 run east along the north line of said Section for 1,200 feet, more or less; thence run S 38° E for 550 feet, more or less; thence run east for 850 feet, more or less; thence run south for 900 feet, more or less; thence run S 38° E for 350 feet, more or less; thence run south for 350 feet, more or less; thence run S 40° E for 600 feet, more or less; to the waters of the Caloosahatchee River; thence run south westerly along said meandering waters for 950 feet, more or less; thence run westerly, along said meandering waters for 3,050 feet, more or less, to an intersection with the west line of said Section 11; thence run northerly, along said west line for 3,900 feet, more or less to the Point of Beginning.

Bearings hereinabove mentioned are assumed, based on the north line of said Section 11 to bear east.

Section 15:

All of that part of the section lying northerly of the Caloosahatchee River.

Section 16:

All of the section.

Section 21:

All lying west of the Caloosahatchee River less the south 600 feet (City of Cape Coral).

Florida Cities Water Company  
Lee County Wastewater  
North Service Territory

IN TOWNSHIP 44 SOUTH, RANGE 24 EAST:

Section 3:

All of the south half (S-1/2) of the south-west quarter (SW-1/4) lying south of Hancock Creek, excepting the southeast quarter (SE-1/4) of the southeast quarter (SE-1/4) of the southwest quarter (SW-1/4) thereof.

All of the east half (E-1/2) of the north half (N-1/2) of the south-west quarter (SW-1/4) lying south of Hancock Creek, excepting that part of the east half (E-1/2) of the southeast quarter (SE-1/4) of the northeast quarter (NE-1/4) of the southwest quarter (SW-1/4) lying south of Hancock Creek.

Section 4:

The south half (S-1/2) of the southeast quarter (SE-1/4).

The south half (S-1/2) of the north half (N-1/2) of the southeast quarter (SE-1/4).

The south half (S-1/2) of the south half (S-1/2) of the north half (N-1/2) of the northwest quarter (NW-1/4) of the southeast quarter (SE-1/4).

The southeast quarter (SE-1/4) of the southwest quarter (SW-1/4) of the southwest quarter (SW-1/4).

The southeast quarter (SE-1/4) of the southwest quarter (SW-1/4), excepting the northwest quarter (NW-1/4) of the southeast quarter (SE-1/4) of the southwest quarter (SW-1/4).

Florida Cities Water Company  
Lee County Wastewater  
North Service Territory

IN TOWNSHIP 44 SOUTH, RANGE 24 EAST:

Section 9:

All of the section excepting the west half (W-1/2) of the west half (W-1/2) of the northwest quarter (NW-1/4). (City of Cape Coral).

Section 10:

All of the section excepting the north half (N-1/2) of the northeast quarter (NE-1/4) lying east of Hancock Creek.

Section 11:

All that portion of Section 11, being described as follows: Beginning at the northwest corner of Section 11 run east along the north line of said Section for 1,200 feet, more or less; thence run S 38° E for 550 feet, more or less; thence run east for 850 feet, more or less; thence run south for 900 feet, more or less; thence run S 38° E for 350 feet, more or less; thence run south for 350 feet, more or less; thence run S 40° E for 600 feet, more or less; to the waters of the Caloosahatchee River; thence run south westerly along said meandering waters for 950 feet, more or less; thence run westerly, along said meandering waters for 3,050 feet, more or less, to an intersection with the west line of said Section 11; thence run northerly, along said west line for 3,900 feet, more or less to the Point of Beginning.

Bearings hereinabove mentioned are assumed, based on the north line of said Section 11 to bear east.



ORDER NO. PSC-92-0974-FOF-WS  
DOCKET NO. 911203-WS  
PAGE 15

ATTACHMENT B  
PAGE 6 OF 6

Florida Cities Water Company  
Lee County Wastewater  
North Service Territory

IN TOWNSHIP 44 SOUTH, RANGE 24 EAST:

Section 15:

All of that part of the section  
lying northerly of the  
Caloosahatchee River.

Section 16:

All of the section.

Section 21:

All lying west of the Caloosahatchee  
River less the south 600 feet (City of  
Cape Coral).