

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 950196-WU
amendment of Certificate No.) ORDER NO. PSC-95-0984-FOF-WU
434-W in Highlands County by) ISSUED: August 10, 1995
Sebring Ridge Utilities, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER AMENDING CERTIFICATE NO. 434-W TO
REFLECT ADDITIONAL TERRITORY
AND
CLOSING DOCKET

BY THE COMMISSION:

Background

On February 20, 1995, Sebring Ridge Utilities, Inc. (Sebring or utility) filed an application with this Commission for amendment of Certificate No. 434-W to include additional territory adjacent to its existing territory in Highlands County. Sebring currently serves approximately 692 water and 293 wastewater customers. The utility is also serving two residential customers in the additional territory. We became aware that Sebring was serving outside of its certificated territory when it filed the application for amendment.

Pursuant to Section 367.045(2), Florida Statutes, a utility may not delete or extend its service area outside the area described in its certificate of authorization unit it has obtained an amended certificate from the Commission. Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with or to have willfully violated any provision of Chapter 367, Florida Statutes.

Sebring was in the middle of negotiations to sell to the City of Sebring (City) when the two residential customers requested service because of well contamination in the area. Sebring began serving the customers upon being advised by the City to do so. The

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sale to the City fell through after one year of negotiations, leaving Sebring serving two customers outside of its territory.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). The utility's failure to obtain antecedent Commission approval to extend its service area outside the area described in its certificate of authorization meets the "willful" standard. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

We do not find it appropriate to initiate show cause proceedings against Sebring for violation of Section 367.045(2), Florida Statutes, for several reasons. First, the utility took the necessary steps to correct the violation once it was discovered. In addition, the private wells in the area are contaminated and the customers were desperate for water service. We received a letter from Mr. Roger L. Christopher, Environmental Health Director of the Department of Health and Rehabilitative Services (HRS), stating that there is a severe groundwater contamination problem in Highlands County and that it is prudent for these homes to be served by Sebring.

As stated previously, Sebring's plans to sell the utility to the City fell through leaving it serving customers outside of its certificated area. Sebring did not approach the Commission before serving these customers, because it assumed that the pending sale to the City would be finalized. Since Sebring has attempted to correct this violation, we do not believe that the violation of Section 367.045(2), Florida Statutes, rises to the level of warranting that a show cause order be issued.

Application

Except as discussed previously, Sebring's application is in compliance with Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules. In particular, the application contains a filing fee in the amount of \$100, pursuant to Rule 25-30.020, Florida Administrative Code. Sebring also

provided a copy a warranty deed which provides for the continued use of the land as required by Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(3)(e), (f) and (i), Florida Administrative Code. A description of the additional territory which Sebring is requesting to service in Highlands County is appended to this Order as Attachment A.

Sebring has provided proof of compliances with the noticing provisions of Rule 25-30.030, Florida Administrative Code. No objections to the notice of application have been received and the time for filing such has expired.

Since Sebring has been in operation under our jurisdiction since 1979, and has been providing satisfactory service to its customers, we believe that the utility has demonstrated its ability to provide service to the additional territory. Also, from the information filed with the application, it appears that Sebring has the financial ability to serve the requested area. In addition, according to the Department Environmental Protection, there are no outstanding notices of violation against Sebring.

Therefore, we find that it is in the public interest to amend Certificate No. 434-W to include the territory described in Attachment A of this Order, which by reference is incorporated herein. Sebring has returned the Certificate to this Commission for entry reflecting the additional territory. The utility has also filed revised tariff sheets reflecting the amendment.

Rates and Charges

Sebring's existing rates and charges became effective on February 6, 1995, pursuant to a price index and pass-through application. Service availability charges became effective on March 28, 1988, pursuant to Order No. 18961 issued in Docket No. 870776-WS. Sebring shall charge the customers in the territory added herein the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding.

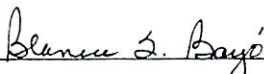
It is, therefore,

ORDERED by the Florida Public Service Commission that Certificate No. 434-W, held by Sebring Ridge Utilities, Inc., Post Office Box 488, Sebring, Florida 33871-0488, are hereby amended to include the territory described in Attachment A of this Order. It is further

ORDERED that Sebring Ridge Utilities, Inc. shall charge the customers in the territory added herein the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that Docket No. 950196-WU is hereby closed.

By ORDER of the Florida Public Service Commission, this 10th day of August, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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, 2540 Shumard Oak Boulevard, Tallahassee,

Florida 32399-0850, 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 and/or wastewater 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

ATTACHMENT A

SEBRING RIDGE UTILITIES, INC.

Highlands County

Lake Sebring Estates - Water Service Area

Township 34 South, Range 28 East

Section 12

Commence at the South 1/4 Corner of Section 12, Township 34 South, Range 28 East, Highlands County, Florida; thence North 01° 41' West for a distance of 1,349.80 feet to a point on the Southerly boundary of the A.C.L. Railroad Right-of-Way, thence North 42° 08' 20" West following the Southwest boundary of the A.C.L. Railroad Right-of-Way a distance of 681.03 feet to the Point-of-Beginning, thence run South 60° 27' 30" West along the North boundary of a 40 foot canal a distance of 398.13 feet to a point, thence North 23° 32' 30" West a distance of 125 feet, thence North 02° 41' 47" East a distance of 73.34 feet, thence North 42° 08' 20" West a distance of 186.31 feet, thence North 23° 34' 39" West a distance of 75.90 feet, thence North 53° 10' 30" West a distance of 125 feet, thence North 36° 49' 30" East a distance of 316.62 feet to a point on the Southwest boundary of the A.C.L. Railroad Right-of-Way, thence South 42° 08' 20" East following the boundary of the A.C.L. Railroad Right-of-Way a distance of 713.28 feet to the Point-of-Beginning.

ATTACHMENT A

SEBRING RIDGE UTILITIES, INC.

Highlands County

Mr. White's Unrecorded Lots - Water Service Area

Township 34 South, Range 28 East

Section 12

Commence at the South 1/4 Corner of Section 12, Township 34 South, Range 28 East, Highlands County, Florida; thence North 01°41' West for a distance of 1,349.80 feet to a point on the Southerly boundary of A.C.L. Railroad Right-of-Way, thence North 42° 08' 20" West following the Southwest boundary of the A.C.L. Railroad Right-of-Way a distance of 1,394.30 feet to a point, thence South 36° 49' 30" West a distance of 1,153.01 feet to the Point of Beginning, thence continue South 36° 49' 30" West a distance of 150.05 feet to the Shoreline of Lake Sebring, thence North 54° 42' 28" West following the shoreline of Lake Sebring a distance of 717.75 feet to a point; thence North 18° 16' 30" East a distance of 156.87 feet to a point, thence South 54° 42' 28" West a distance of 768.35 feet to the Point of Beginning.