

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for quick-take amendment of Certificate No. 587-W to extend the Lake Gibson Estates water service territory in Polk County by Aqua Utilities Florida, Inc.

DOCKET NO. 080537-WU
ORDER NO. PSC-09-0253-FOF-WU
ISSUED: April 27, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER ACKNOWLEDGING QUICK TAKE AMENDMENT OF CERTIFICATE NO. 587-W IN POLK COUNTY BY AQUA UTILITIES FLORIDA, INC. AND DECLINING TO INITIATE A SHOW CAUSE PROCEEDING

Background

Aqua Utilities Florida, Inc. (AUF or Utility) is a Class A utility with 82 water and wastewater systems located in sixteen counties throughout Florida. By Order No. PSC-97-0376-FOF-WS, issued April 7, 1997, we granted Certificate No. 587-W to the Utility to serve territory in Polk County; original water and wastewater rates were also established in that docket.¹ The proposed area is located in the Southwest Florida Water Management District (SWFWMD). AUF provides water and wastewater service to approximately 769 water and 303 wastewater customers in Lake Gibson Estates, including eight connections that are outside of its certificated area. Wastewater service is provided by septic tanks to these eight customers. It was discovered during the 2006 rate case (Docket No. 060368-WS) that the Utility was serving outside its territory at this system. On August 18, 2008, one customer notified us that the territory description was difficult to read, and objected to notice. After the customer was contacted and his concerns about the notice were addressed, the customer did not pursue an objection. On August 12, 2008, the Utility applied for a "Quick Take" amendment application in Polk County for its water system. We have jurisdiction pursuant to Section 367.045, Florida Statutes (F.S.).

Declining to Initiate Show Cause

As stated in the case background, AUF, is serving customers outside of its certificated territory. Section 367.045(2), F.S., states in pertinent part: "A utility may not delete or extend its service outside the area described in its certificate of authorization until it has obtained an

¹ In Docket No. 960909-WS, In re: Application for Grandfather Certificates to Provide Water and Wastewater Service in Polk County by Southern States Utilities, Inc.

DOCUMENT NUMBER - DATE

03871 APR 27 08

FPSC-COMMISSION CLERK

amended certificate of authorization from the [C]ommission” If a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, F.S., Section 367.161(2), F.S., authorizes us to assess a penalty of not more than \$5,000 for each offense. By serving customers outside of its certificated territory without obtaining an amended certificate of authorization, the Utility’s act was “willful” within the meaning of Section 367.161, F.S. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., we, 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 “[i]n our view, ‘willful’ implies an intent to do an act, and this is distinct from an intent to violate a statute or rule;” see also Order No. PSC-99-2390-FOF-WU, issued on December 7, 1999, in Docket No. 980543-WU, In Re: Application for amendment of Certificate No. 363-W to add territory in Marion County by Sunshine Utilities of Central Florida, Inc. (finding that the utility’s apparent violation of Section 367.045, F.S., did not warrant the initiation of a show cause proceeding).

Although AUF’s failure to obtain an amendment for Certificate No. 587-W from us prior to serving outside of its certificated area is an apparent violation of Section 367.045(2), F.S., according to its application, the Utility erroneously believed that the territory in question was included in its service area. When the error was discovered, AUF filed the instant application to correct the mistake and include the territory to its service area. The Utility has indicated that throughout this time period, the calculation of the annual regulatory assessment fees (RAFs) for AUF was inclusive of all these customers.

We do not believe that the apparent violation of Section 367.045, F.S., rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, we decline to initiate a show cause proceeding for AUF’s failure to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

Acknowledging Quick Take Amendment

On August 12, 2008, AUF applied for a “Quick Take” amendment to Water Certificate No. 587-W in Polk County, Florida, pursuant to Rule 25-30.036(2), Florida Administrative Code (F.A.C.) for eight residential customers in the Lake Gibson Estates system. The completed application was filed on February 16, 2009. Service to these eight water customers occurred between November 1987 and May 2003. The requested territories are contiguous to the Utility’s existing service territory.

The application is in compliance with the governing statute, Section 367.045, F.S., and other pertinent statutes and administrative rules concerning an application for amendment of certificate. Adequate service territory maps and a territory description have been provided as prescribed by Rule 25-30.036(3)(e) and (i), F.A.C. The additional territory requested by AUF is described in Attachment A. A composite territory description which reflects the combined existing and amended areas are also included in Attachment A. The Utility has submitted an affidavit consistent with Section 367.045(2)(d), F.S., that it has tariffs and annual reports on file with us.

The "Quick Take" amendment is designed to provide water and/or wastewater service quickly for areas that serve less than 25 Equivalent Residential Connections (ERCs). The request for service territory expansion and amendment of an existing certificate is considered approved when the Utility complies with Rule 25-30.036(2), F.A.C., and if no protest is timely filed to the notice of application. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C.

The Utility states that the new territory will not exceed a maximum of 25 ERCs at the time the territories are built out. According to AUF, no other utility in the area is willing and/or capable of providing reasonably adequate service to the territory. The Utility has indicated that throughout this time period, the calculation of the RAFs for AUF was inclusive of all of these customers.

We contacted the Polk County Health Department and learned that there are no outstanding notices of violation issued for AUF. The rates and charges approved by us for AUF's service area shall be applied to the customers in the new service territory.

Based on the above information, we acknowledge AUF's quick take amendment application to expand its territory. The proposed territory amendment is described in Attachment A to this recommendation. The resultant order shall serve as AUF's amended certificate and it shall be retained by the Utility. AUF shall charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by us in a subsequent proceeding. In addition, the Utility shall file revised tariff sheets that incorporate the additional territory within thirty (30) days from the date of this order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated. It is further

ORDERED that Aqua Utilities Florida, Inc.'s quick take amendment of Certificate No. 587-W to expand its certificated territory, as described in Attachment A, is acknowledged. It is further

ORDERED that this Order shall serve as Aqua Utilities Florida, Inc.'s amended certificate and shall be retained by the Utility. It is further

ORDERED that the existing charges contained in its tariff shall be applied to the customers in the new territory until Aqua Utilities Florida, Inc. is authorized to change them in a subsequent proceeding. It is further

ORDERED that Aqua Utilities Florida, Inc. shall file revised tariff sheets that incorporate the additional territory within thirty (30) days from the date of this Order. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 27th day of April, 2009.



ANN COLE
Commission Clerk

(S E A L)

ELS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 Office of Commission Clerk, 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 Office of Commission Clerk, 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.

Aqua Utilities Florida, Inc.
Polk County
Description of Water Territories Added

Lake Gibson

Township 27 South, Range 23 East in Sections 19

1. Begin At The Southeast Corner Of Section 24 Also Referred To As The Point Of Beginning And Run N00°08'25"E A Distance Of 1,863.6 Feet, Thence Run N89°03'25"E A Distance Of 981.1 Feet, Thence Run N89°04'32"E A Distance Of 99.0 Feet, Thence Run S00°08'24"W A Distance Of 532.1 Feet, Thence Run S88°53'17"W A Distance Of 301.2 Feet, Thence Run S00°00'52"E A Distance Of 100.0 Feet, Thence Run S88°50'12"E A Distance Of 185.9 Feet, Thence Run S00°07'57"W A Distance Of 574.8 Feet, Thence Run S88°48'37"W A Distance Of 14.4 Feet, Thence Run S00°03'33"W A Distance Of 322.8 Feet, Thence Run S88°48'37"W A Distance Of 79.4 Feet, Thence Run S00°03'35"W A Distance Of 330.0 Feet, Thence Run S88°50'01"W A Distance Of 872.5 Feet To The Point Of Beginning.

2. Commence At The Southwest Corner Of Section 19, Township 27s, Range 24e And Run N00°08'28"E A Distance Of 2395.2 Feet To The Point Of Beginning, Thence Run N00°14'24"E A Distance Of 295.1 Feet, Thence Run N89°15'51"E A Distance Of 980.1 Feet, Thence Run S00°04'53"W A Distance Of 292.4 Feet, Thence Run S89°06'27"W A Distance Of 981.0 Feet To The Point Of Beginning.

Aqua Utilities Florida, Inc.
Polk County
Composite Water Service Area

Lake Gibson

Township 27 South, Range 23 East in Sections 19 and 24

Commence From The Northwest Corner Of Section 24 And Run N89°33'56"E A Distance Of 2223.4 Feet To The Point Of Beginning, Thence Run N89°32'57"E A Distance Of 450.0 Feet, Thence Run S0°14'02"W A Distance Of 1329.2 Feet, Thence Run N89°35'02"E A Distance Of 2874.0 Feet, Thence Run S0°14'24"W A Distance Of 1297.4 Feet, Thence Run N89°15'51"E A Distance Of 980.1 Feet, Thence Run S0°6'48"W A Distance Of 823.0 Feet, Thence Run N89°4'32"E A Distance Of 99.0 Feet, Thence Run S0°8'24"W A Distance Of 532.1 Feet, Thence Run S88°53'17"W A Distance Of 301.2 Feet, Thence Run S0°0'52"E A Distance Of 100.0 Feet, Thence Run N88°50'12"E A Distance Of 185.9 Feet, Thence Run S00°07'57"W A Distance Of 574.8 Feet, Thence Run S88°48'37"W A Distance Of 14.4 Feet, Thence Run S00°03'33"W A Distance Of 322.8 Feet, Thence Run S88°48'37"W A Distance Of 79.4 Feet, Thence Run S0°3'35"W A Distance Of 330.0 Feet, Thence Run S88°50'01"W A Distance Of 872.5 Feet, Thence Run S89°36'21"W A Distance Of 1,210.4 Feet To A Point More Or Less Located On The Eastern Shoreline Of Lake Gibson, Thence Meander Northwesterly 3535.2 Feet Along Said Shoreline, Thence Run N00°14'27"E A Distance Of 663.7 Feet, Thence Run N89°37'39"W A Distance Of 829.8 Feet, Thence Run Due North A Distance Of 622.3 Feet, Thence Run N89°54'46"W A Distance Of 507.0 Feet, Thence Run N00°20'37"E A Distance Of 1328.8 Feet, Thence Run N89°33'47"E A Distance Of 2,226.0 Feet, Thence Run N00°14'02"E A Distance Of 1,329.2 Feet To The Point Of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Aqua Utilities Florida, Inc.
pursuant to
Certificate Number 587-W

to provide water service in Seminole County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-97-0376-FOF-WS	04/07/97	960909-WS	Grandfather
PSC-97-0427-FOF-WS	04/16/97	970028-WS	Name Change
PSC-05-1242-PAA-WS	12/20/05	040951-WS	Transfer
PSC-09-0253-FOF-WU	04/27/09	080537-WU	Amendment