

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

JANUARY 9, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (REDEMANN) *Per [unclear]*
DIVISION OF LEGAL SERVICES (VACCARO) *[unclear]*

RE: DOCKET NO. 960915-WS - FLORIDA CITIES WATER COMPANY -
BREVARD COUNTY DIVISION - APPLICATION FOR AMENDMENT OF
CERTIFICATES NOS. 7-W AND 3-S
COUNTY: BREVARD

AGENDA: JANUARY 21, 1997 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\960915WS.RCM

DOCUMENT NUMBER-DATE

00256 JAN-96

FPSC-RECORDS/REPORTING

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CASE BACKGROUND

Florida Cities Water Company - Barefoot Bay Division (Barefoot Bay or utility) provides water and wastewater service in Brevard County and serves approximately 4,567 water and 4,567 wastewater customers. The Florida Cities Water Company includes the Barefoot Bay, Golden Gate and Lee County Divisions, which combined serve 24,263 water and 14,408 wastewater customers. The annual report for 1995 shows that the consolidated annual operating revenue for the Barefoot Bay, Golden Gate and Lee County systems is \$14,035,044 and the net operating income is \$1,455,792. The utility is a Class A utility company under Commission jurisdiction.

On August 13, 1996, the utility applied for an amendment of Water Certificate No. 7-W and Wastewater Certificate No. 3-S in Brevard County to include territory that it has been servicing for some time and new area that is adjacent to the service area. At the time of the application, the utility was serving 11 water and wastewater equivalent residential connections (ERCs) outside of its certificated area. The customers are commercial customers. Staff has authority to administratively approve applications for amendment when no objections have been filed and the application is without controversy. This case is being brought to the attention of the Commission to address the utility's alleged violation of Section 367.045(2), Florida Statutes, in that the utility is serving outside of its certificated area. The alleged violation of Section 367.045(2), Florida Statutes, will be addressed in greater detail in Issue 1. In addition, staff is recommending that the Commission correct Barefoot Bay's territory description set forth in Order No. 5016, issued December 30, 1970 in Docket No. 70394-WS, which omitted an angle and distance. This error is discussed in Issue 3 and the correction is reflected in Attachment B.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Florida Cities Water Company to show cause, in writing within twenty days, why it should not be fined for violation of Section 367.045(2), Florida Statutes?

RECOMMENDATION: No. Show cause proceedings should not be initiated. (VACCARO, REDEMANN)

STAFF ANALYSIS: At the time of the application, the utility was serving six water and wastewater customers outside of its certificated area. 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 until it has obtained an amended certificate of authorization 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.

Staff first became aware that the utility was serving outside of its certificated area through the filing of this application. 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 appears to be willful in the sense intended by Section 367.161, Florida Statutes. 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.

Staff is recommending that no show cause proceedings be initiated for violation of Section 367.045(2), Florida Statutes. The utility states, "Upon preparation of the territorial map for this application, FCWC (Florida Cities Water Company) discovered that due to inadvertent errors in interpretation of the legal description of its certificated service areas, water and wastewater service was being provided to (six customers) located outside its

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certificated area." In further discussion with the utility's attorney, he explained that the company's engineer was initially preparing this amendment application to serve a bulk customer. During the process of interpreting the legal description the company's engineer determined that there were additional customers outside of the utility's service area. The utility acknowledged the problem and attempted to correct it through this application.

In consideration of the foregoing, Staff does not believe that this utility's violation of Section 367.045(2), Florida Statutes, rises to the level of warranting that a show cause order be issued. Therefore, Staff recommends that the Commission not order Barefoot Bay to show cause why it should not be fined for failing to obtain the Commission's approval for extending its service area prior to serving that area.

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ISSUE 2: Should the application of Florida Cities Water Company for amendment of Water Certificate No. 7-W and Wastewater Certificate No. 3-S be granted?

RECOMMENDATION: Yes, Florida Cities Water Company's application should be granted. (REDEMANN)

STAFF ANALYSIS: As stated earlier, on August 13, 1996, the utility applied for an amendment of Water Certificate No. 7-W and Wastewater Certificate No. 3-S in Brevard County to extend its certificated territory to include territory that it has been servicing for some time and new area adjacent to the service area. Except as noted in Issue 1, 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 \$200, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided a copy of a warranty deed which provides for the continued use of the land upon which the facilities are located 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. Descriptions of the water and wastewater territory are appended to this recommendation as Attachments A, B and C, respectively. Attachment A includes the additional area. Attachment B includes a corrected territory description of the territory granted in Order No. 5016. This correction is addressed in Issue 3. Attachment C includes a complete rewrite of the utility's existing territory. The rewrite includes the area granted in Orders Nos. 5016 (with the correction discussed in Issue 3) and 9526 and the new area in this docket. Additional angles and distances were added to this description to make the description clear and concise. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, 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. No objections have been received and the time for filing such has expired. The local planning agency was provided notice of the application and did not file a protest. Staff has contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation regarding this utility.

Barefoot Bay has the financial and technical ability to continue to provide service to the customers. Barefoot Bay is a

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large, multi-county operation in the State of Florida, and has been in the water and wastewater utility business since 1965. As stated earlier, these customers are already being served. Therefore, it is apparent that the utility has the capacity to serve these customers. Staff believes the utility has demonstrated the financial and technical expertise to provide quality service to these customers. The Commission approved Barefoot Bay's most recent rate increase by Order No. PSC-96-1147-FOF-WU, issued September 12, 1996 in Docket No. 951258-WS. Service availability charges for water and wastewater became effective on September 29, 1994 by Order No. PSC-94-0961-FOF-WS in Docket No. 940106-WS, issued August 8, 1994. The Commission approved an increase in Barefoot Bay's service availability charges for wastewater by Order No. PSC-96-0935-FOF-SU, issued July 18, 1996 in Docket No. 951311-SU. Staff recommends the rates and charges approved by the Commission be applied to customers in the new service territory.

Based on the above information, staff believes it is in the public interest to grant the application of Florida Cities for amendment of Water Certificate No. 7-W and Wastewater Certificate No. 3-S. The utility has returned the certificates for entry of the additional territory and filed revised tariff sheets which reflect the amended territory description.

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ISSUE 3: Should the correction of territory in Brevard County included in Certificates Nos. 7-W and 3-S be granted to Florida Cities Water Company, Inc.?

RECOMMENDATION: Yes, Florida Cities Water Company, Inc.'s corrected territory description described in Attachment B in Brevard County should be granted. (REDEMANN)

STAFF ANALYSIS: As stated earlier, the territory description that was included in Order No. 5016 was not correct. The territory description in this order omitted one angle and distance. The description of "thence South 0° 0 min. West, a distance of 300 feet;" needs to be added to the territory description to correct it. This language has been added to the sixth and seventh line from the bottom of the description in Attachment B. Without the angle and distance the territory description does not close. Staff discovered the error when the utility mapped the old territory, and the new area. The only difference is in the addition of the one angle and distance that were left out of the territory description. The description of the corrected territory is appended to this memorandum as Attachment B.

Based on the above information, staff believes it is in the public interest for the Commission to approve the correction of territory to Florida Cities' Water Certificate No. 7-W and Wastewater Certificate No. 3-S to include the corrected territory description as described in Attachment B. The utility has returned its certificates to include the corrected territory and filed revised tariff sheets that reflect the corrected territory description.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes, the docket should be closed. (VACCARO)

STAFF ANALYSIS: If the Commission votes in Issue 1 that a show cause proceeding should not be initiated, no other issues remain in the docket and it should be closed.

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ATTACHMENT A

FLORIDA CITIES WATER COMPANY - BREVARD COUNTY DIVISION

BAREFOOT BAY

WATER AND WASTEWATER ADDITIONAL AREA

A parcel of land lying in said Section 11, Township 30 South, Range 38 East, Brevard County, Florida:

Begin at the Southwest corner of Said Section 11, thence East along the South line of said Section 11 for 1617.4 feet; thence North 23°53'16" West parallel with the Florida East Coast Railroad right of way a distance of 190.7 feet; thence North 77°07' 44" East, a distance of 681.4 (plus or -) feet to the Westerly boundary of U.S. Highway 1 (State Road No. 5); thence Northwesterly along said westerly boundary 1229.3 feet (plus or -), thence West a distance of 270 feet (plus or -); thence South 260 feet (plus or -); thence West a distance of 250 feet (plus or -); thence South 23°52'14" East parallel with the Florida East Coast Railroad right of way a distance of 170 feet (plus or -); thence West a distance of 115.6 feet (plus or -); thence North 23°52'14" West along the Easternmost boundary of said railroad right of way a distance of 170 feet (plus or -); thence West, a distance of 1044.9 feet (plus or -), to a point being on the East boundary of Section 10, Township 30 South, Range 38 East; thence South 00°09'34" East along said boundary line a distance of 1188 feet to the POINT OF BEGINNING.

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ATTACHMENT B
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FLORIDA CITIES WATER COMPANY - BREVARD COUNTY DIVISION

BAREFOOT BAY

WATER AND WASTEWATER DESCRIPTION

ORDER NO. 5016 CORRECTED

Beginning at the Northeast corner of Section 15, Township 30 South, Range 38 East; thence South a distance of 300 feet; thence South 89° 32 min. 20 sec. West, a distance of 2370 feet; thence North 230 feet to the South boundary of Micco Road right-of-way; thence Westerly along south boundary of said right-of-way to East boundary of Fleming Grant Road; thence Southerly along East boundary of said Road, a distance of 1950 feet; thence South 89° 32 min. 20 sec. East, a distance of 1350 feet to a point more particularly described as Southeast corner North half, Southwest quarter, Northeast quarter of Section 15, of said Township and Range; thence South 0° 05 min. 00 sec. East, a distance of 950 feet ±; thence South 89° 46 min. 20 sec. West to centerline of Fleming Grant Road; thence Northerly along said centerline to the center of Section 15 of said Township and Range; thence South 89° 46 min. 20 sec. West along South boundary of Northwest quarter of said Section, Township and Range for a distance of 2333.53 feet; thence North 44° 37 min 18 sec. West 475.72 feet; thence North 0° 32 min. 45 sec. West 993.85 feet; thence North 89° 53 min. 10 sec. East to Southwest corner of East half, East half, Northeast half, Northwest quarter of said Section, Township and Range; thence North 0° 31 min. 49 sec. West to South boundary of Micco Road right-of-way; thence Westerly along said boundary of said right-of-way to a point, said point being the intersection of said boundary of said right-of-way with the extension of the West boundary of East Lark Drive; thence North 12° 10 min. 00 sec. East, a distance of 1970 feet±; thence North 53° 40 min. 00 sec. West, a distance of 820 feet±; thence Southwesterly, then Northwesterly along the North periphery of waterway, a distance of 2560 feet±, to a point on the East/West centerline of Section 9, Township 30 South, Range 38 East; thence Westerly to center of Section 9 of said Township and Range; thence North 89° 49 min. 31 sec. West for a distance of 1326.90 feet; thence North 00° 29 min. 39 sec. West for a distance of 1343.21 feet to the Northwest corner, Southeast quarter, Northwest quarter, Section 9 of said Township and Range; thence South 89° 44 min. 36 sec. East along a line to a point, said point being the intersection of said line with the Easterly boundary of

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FLORIDA CITIES WATER COMPANY - BREVARD COUNTY DIVISION

BAREFOOT BAY

WATER AND WASTEWATER DESCRIPTION

ORDER NO. 5016 CORRECTED

(CONTINUED)

East Barefoot Circle; thence South 15° 30 min. 00 sec. West, a distance of 540 feet; thence South 51° 25 min. 00 sec. East, a distance of 1700 feet±; thence South 89° 55 min. 00 sec. East, a distance of 400 feet±; thence North 51° 25 min. 00 sec. East, a distance of 1100 feet±; thence Southeasterly to the center of Section 10, Township 30 South, Range 38 East; thence Easterly along the East/West centerline of said Section 10 to the Northeast corner of the Southeast quarter of said Section 10; thence East to Westerly boundary of U.S. Highway No. 1 (S.R. No. 5) right-of-way; thence Southeasterly along said boundary, a distance of 1390 feet±; thence West, a distance of 270 feet±; thence South, a distance of 260 feet±; thence West, a distance of 250 feet±; thence Southeasterly parallel to Florida East Coast Railroad right-of-way, a distance of 170 feet±; thence West, a distance of 185 feet±; thence Northwesterly along Easterly boundary of said railroad right-of-way, a distance of 170 feet±; thence West along a line to a point, said point being on the West boundary of Section 11, Township 30 south, Range 38 east; thence South 0° 0 min. West, a distance of 300 feet; thence South 77° 00 min. West, a distance of 120 feet; thence West, a distance of 1450 feet; thence South, a distance of 200 feet; thence West, a distance of 1150 feet; thence South along the North/South centerline of said Section 10, a distance of 600 feet; thence East, a distance of 2700 feet to the Point of Beginning.

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FLORIDA CITIES WATER COMPANY - BREVARD COUNTY DIVISION

BAREFOOT BAY

COMPOSITE WATER AND WASTEWATER DESCRIPTION

A portion of Sections 9, 10, 11, 15 and 16, Township 30 South, Range 38 East, Brevard County, Florida, being more particularly described as follows:

Begin at the Northeast corner of Section 15, Township 30 South, Range 38 East, proceed Southerly along the Eastern boundary line of said Section 15, a distance of 1334 feet, more or less, to the Southeast corner of the Northeast 1/4 of the Northeast 1/4; thence Westerly along the South boundary of the Northeast 1/4 of the Northeast 1/4 of said Section 15, a distance of 1331 feet, more or less, to the Southwest corner of the Northeast 1/4 of the Northeast 1/4 of said Section 15; thence North 00°32' 12" West, a distance of 11.20 feet; thence South 89°32'20" West, a distance of 330.01 feet; thence North 00°32'12" West, a distance of 330 feet to a line described as the North boundary of the South 330 feet of the North 1320 feet of the Northwest 1/4 of the Northeast 1/4 of said Section 15, thence South 89°32'20" West, along said boundary line for a distance of 335.43 feet; thence South 00° 32' 12" East, a distance of 330 feet to a line described as the South boundary of the North 1320 feet of the Northwest 1/4 of the Northeast 1/4 of said Section 15; thence South 89° 32' 20" West, a distance of 343.26 feet; thence North 00°31'40" West, along the East boundary of the West 10 acres of the Northwest 1/4 of the Northeast 1/4 of said Section 15 a distance of 1320.00 feet to a point on a line 50.00 feet south of and parallel with the North line of said Section 15 (the Southern boundary of Micco Road right-of-way); thence South 89°32'20" West parallel with and 50.00 feet south of the North line of said Section 15, a distance of 287.9 feet, to a point on a line 40.00 feet west of and parallel with the west line of the Northeast 1/4 of said Section 15 (the East line of Flemming Grant Road); thence South 00°31'40" East along said line a distance of 1950 feet; thence South 89°32'20" East, a distance of 1350 feet to the Southeast corner of the North 1/2, Southwest 1/4, Northeast 1/4 of said Section 15; thence South 0°05'00" East, a distance of 950 feet, more or less; thence South 89°46'20" West, a distance of 1331.43 feet, to the West line of the Southeast 1/4 of said Section 15; thence northerly along the North-South centerline of said

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FLORIDA CITIES WATER COMPANY - BREVARD COUNTY DIVISION

BAREFOOT BAY

COMPOSITE WATER AND WASTEWATER DESCRIPTION

Section 15, a distance of 261.75 feet to the center of said Section 15; thence South 89°46'20" West, along South boundary of the Northwest 1/4 of said Section 15, for a distance of 2333.53 feet; thence North 44°37'18" West, a distance of 475.72 feet, to the West line of said Section 15; thence North 0°32'45" West, along said West line, a distance of 993.85 feet, to the South boundary of the North 1/2 of the Northwest 1/4, of said Section 15; thence North 89°53'10" East, a distance of 2331.8 feet, to Southwest corner of the East 1/2, East 1/2, Northeast 1/4, Northwest 1/4 of said Section 15; thence North 00°31'49" West, along the West line of the East 1/2, East 1/2, Northeast 1/4, Northwest 1/4 of said Section 15, a distance of 1319.16 feet to a line lying 50.00 feet South of and parallel with the North line of said Section 15 (the South boundary of Micco Road right-of-way); thence Westerly parallel with and 50.00 feet South of the North lines of said Sections 15 and 16, a distance of 4992.7 feet, to the West boundary of the Northeast 1/4 of Section 16, Township 30 South, Range 38 East, thence North 00°33'44" West along said boundary and the West boundary of the Southeast 1/4 of Section 9, Township 30 South Range 38 East, a distance of 2732.1 feet, to the center of said Section 9; thence North 89°49'31" West, along the South line of the Northwest 1/4 of said Section 9 for a distance of 1326.90 feet, to the Southwest corner of the Southeast 1/4, Northwest 1/4, said Section 9; thence North 00°29'39" West, along the West line of the Southeast 1/4, Northwest 1/4, said Section 9, for a distance of 1343.21 feet to the Northwest corner of the Southeast 1/4, Northwest 1/4, Section 9 of said Township and Range; thence South 89°44'36" East, along the North boundary of the Southeast 1/4 of Northwest 1/4 of said Section 9 a distance of 1325.33 feet, more or less to the Northeast corner of the Southeast 1/4 of Northwest 1/4 of said Section 9; thence North 00°33'44" West, along the West boundary of the Northeast 1/4 of said Section 9 a distance of 1341, more or less to the North 1/4 corner of said Section 9; thence Easterly along the North boundary of said Sections 9 and 10, Township 30 South, Range 38 East, a distance of 5318.5 feet, to the North 1/4 corner of said Section 10; thence South 00°38'31" East, along the West boundary of the Northeast 1/4, a distance of 2663.6 feet, to the center point of said Section 10; thence Easterly along

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BAREFOOT BAY

COMPOSITE WATER AND WASTEWATER DESCRIPTION

the East-West centerline of said Section 10, a distance of 2684.6 feet, to the Northeast corner of the Southeast 1/4 of said Section 10; thence East along the East-West centerline of said Section 11, a distance of 1080 feet, to Westerly boundary of U.S. Highway 1 (State Road No. 5) right-of-way; thence Southeasterly along said westerly boundary a distance of 2619.3 feet (plus or -); thence South 77°07'44" West a distance of 681.4 (plus or -) feet; thence South 23°53'16" East parallel to Florida East Coast Railroad right-of-way a distance of 190.7 (plus or -) feet to the South line of said Section 11; thence West along the South line of said Section 11, for a distance of 1,617.4 feet (plus or -) to the Southwest corner of said Section 11, said point also being the Northeast corner of said Section 15 and the POINT OF BEGINNING.