



Public Service Commission

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RECORDS AND REPORTING

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DATE: AUGUST 26, 1999

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

FROM: DIVISION OF WATER AND WASTEWATER (REDEMANN) *BBM PRR*
DIVISION OF LEGAL SERVICES (CROSSMAN, CROSBY) *pd of ANA*

RE: DOCKET NO. 990247-WU - APPLICATION FOR AMENDMENT OF CERTIFICATE NO. 595-W TO ADD TERRITORY IN OSCEOLA COUNTY BY MORNINGSIDE UTILITIES, INC.
COUNTY: OSCEOLA

AGENDA: SEPTEMBER 7, 1999 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\990247.RCM

CASE BACKGROUND

Morningside Utilities, Inc. (Morningside or utility) is a Class C water utility providing service to approximately 175 residential customers in Morningside Village in Osceola County. Wastewater service is provided by septic tanks. The utility reported 1998 total revenues of \$62,802 with a net operating income of \$9,145. The utility's original name was Morningside Utility, Inc. By Order No. PSC-99-1196-FOF-WU, issued June 11, 1999, in Docket No. 990248-WU, the utility's request to change its name to Morningside Utilities, Inc., was approved.

On March 3, 1999 the utility applied for an amendment to Water Certificate No. 595-W in Osceola County, Florida, which is being processed in this docket, along with a separate application for a transfer of majority organizational control, which was processed in Docket No. 990248-WU. The utility transferred majority

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organizational control from Mr. George DeVillers to Mr. Gary Turner on February 27, 1999, prior to Commission approval.

According to the utility, the parties had to close on the stock transfer due to a developer's immediate need for service outside the utility's service territory. Although Morningside was the only provider in the area, the prior owner, Mr. DeVillers, was seeking to get out of the utility business rather than expand the utility's service territory. Further, absent the stock transfer, the buyer, Mr. Turner, did not have the authority to enter into a developer agreement. As a result, the seller and buyer entered into a stock purchase agreement, which was made contingent upon regulatory approval. At the August 17, 1999, Agenda Conference, the Commission approved the utility's transfer of majority organizational control in Docket No. 990248-WU.

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 because the utility is currently serving customers in the proposed territory, which is addressed in Issue 1.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Morningside Utilities, Inc. to show cause, in writing within 21 days, why it should not be fined for apparent violation of Section 367.045(2), Florida Statutes?

RECOMMENDATION: No. Show cause proceedings should not be initiated. (CROSSMAN, CROSBY)

STAFF ANALYSIS: As stated in the case background, the utility began providing service outside of its certificated territory in May of 1999, prior to obtaining an amended certificate of authorization to extend the utility's territory. Consequently, Morningside is in apparent violation of Section 367.045(2), Florida Statutes.

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.

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.

At the time the amendment application was filed, the utility was not serving customers outside its certificated territory; however, in its application the utility indicated that there was an immediate need to extend the utility's service territory and to provide service to customers in that area, for which Morningside was the only provider. Staff first became aware that the utility was serving outside of its certificated area on August 10, 1999, during a phone conversation with Mr. Gary Turner, the utility's operator and current owner. The utility began serving outside of its certificated territory in May 1999, and is currently, as of August 11, 1999, serving five single family residential customers, who are being charged the utility's tariffed rates. The utility expects to hook up an additional twelve single family residential customers by August 23, 1999.

Staff is recommending that no show cause proceedings be initiated for the utility's apparent violation of Section 367.045(2), Florida Statutes. The utility began providing water service because there was an immediate need for service, and Morningside was the only provider in the area. Moreover, the utility's current owner, Mr. Gary Turner, has responded to staff's inquiries in a timely manner and has been extremely cooperative in processing the amendment application in this docket, as well as the

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application for transfer of majority organizational control in
Docket No. 990248-WU.

In consideration of the foregoing, Staff does not believe that the utility's apparent violation of Section 367.045(2), Florida Statutes, rises to the level of warranting initiation of show cause proceedings. Therefore, Staff recommends that the Commission not order Morningside to show cause why it should not be fined for failure to obtain the Commission's approval to extend its service area prior to providing service to that area.

ISSUE 2: Should Morningside Utilities, Inc.'s application for amendment of Water Certificate No. 595-W be approved?

RECOMMENDATION: Yes, Morningside Utilities, Inc.'s application should be granted for the additional territory described in Attachment A. Morningside Utilities, Inc. should charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. (REDEMANN)

STAFF ANALYSIS: As stated earlier, on March 3, 1999, the utility filed an application for amendment of Certificate No. 595-W to add territory in Osceola County, pursuant to Rule 25-30.036(3), Florida Administrative Code. 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 \$100, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The utility has provided a copy of 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 water territory is appended to this recommendation as Attachment A. 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 were filed and the time for filing such has expired. The local planning agency was provided notice of the application and did not file a protest to the amendment. The Department of Community Affairs has identified no growth management concerns with the proposed expansion of the utility into Osceola County. The utility states that the provision of service will be consistent with the utility section of the local comprehensive plan.

The existing water lines are 12 inch from the water treatment plant that reduce down to 8 and 6 inch. Water service will be provided by the 288,000 gallons per day (gpd) water treatment plant. Existing flows are approximately 47,940 gpd. This area is

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expected to place a demand of 10,710 gpd. Therefore, the system has adequate water capacity.

Staff has reviewed the financial statements of the owner and these statements appear to indicate sufficient cash reserves for utility emergencies. All material and labor will be furnished by the developer, and the utility collects \$600 in service availability fees from each home. As for the technical ability of the owner, he currently holds a Florida "B" Drinking Water License as well as a Florida "C" Wastewater License. He has been the operator for Morningside for one year, with a total of nine years experience working with water treatment plants. Staff has confirmed with the Florida Department of Environmental Protection that the utility has been inspected recently and was found to be in satisfactory working condition and in compliance with environmental rules. Consequently, staff believes the utility has demonstrated the financial and technical expertise to provide quality service to these customers.

Staff recommends the rates and charges approved by the Commission be applied to customers in the new service territory. The utility has filed revised tariff sheets incorporating the additional territory into its tariff and returned its certificate for entry reflecting the additional territory.

Based on the above information, staff believes it is in the public interest to grant the application of Morningside Utilities, Inc. for amendment of Water Certificate No. 595-W to include the territory described in Attachment A.

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ATTACHMENT A

Morningside Utilities, Inc.

Osceola County

Water Service Area

Township 25 South, Range 30 East
In Section 2

Beginning at the Northwest corner of Section 2, Township 25 South, Range 30 East, Osceola County, Florida, also the Point of Beginning, Run South 88°42'52" East along the North line of said Section 2, 384.76 feet; run thence South 01°13'08" West, 134.10 feet; run thence North 88°42'51" West, 22.24 feet, run thence South 01°13'08" West, 1,865.87 feet to the South line of Tract A of Morningside Village East, Unit One, as filed and recorded in Plat Book 9, Pages 25 thru 27 of the Public Records of Osceola County, Florida; run thence along the South line of tract A the following courses: North 89°17'24" West 78.25 feet; North 48°31'25" West, 49.29 feet; South 45°01'42" West, 27.65 feet; South 23°57'10" West, 43.79 feet; South 17°19'28" West, 23.82 feet; South 13°33'25" East, 32.04 feet; South 19°59'05" West, 36.60 feet; South 18°50'35" West, 33.93 feet; South 15°34'20" West, 70.52 feet; South 19°29'45" West, 94.80 feet; South 77°12'36" West, 147.27 feet; to a point on the West line of said Section 2, said point being North 01°13'08" East, 291.47 feet from the Southwest Corner of the NW 1/4 of said Section 2; run thence North 01°13'08" East, along said West line 2344.42 feet to the Point of Beginning.

Contains 18.07 acres more or less.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. Because no further action is necessary, this docket should be closed. (CROSSMAN, CROSBY)

STAFF ANALYSIS: Because no further action is necessary, this docket should be closed.