

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment
of Certificate No. 441-W to
extend water service area for 48
Estates System in Lake County by
AquaSource Utility, Inc.

DOCKET NO. 021142-WU
ORDER NO. PSC-03-0627-FOF-WU
ISSUED: May 23, 2003

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER AMENDING CERTIFICATE NO. 441-W, HELD BY
AQUASOURCE UTILITY, INC. TO INCLUDE ADDITIONAL
TERRITORY IN LAKE COUNTY, DECLINING TO INITIATE
A SHOW CAUSE PROCEEDING, AND CLOSING DOCKET

BY THE COMMISSION:

Background

On November 13, 2002, AquaSource Utility, Inc. (AquaSource or
utility) filed an application to amend Certificate No. 441-W to
include additional territory in Lake County, pursuant to Section
367.045, Florida Statutes. AquaSource is a Class A utility that
serves about 4,694 water customers and 3,768 wastewater customers
of systems regulated by this Commission.

In the instant docket, AquaSource has requested to amend the
territory served by the 48 Estates water system, which serves
approximately 75 customers in Lake County. The system is located
in the St. Johns River Water Management District (SJRWMD), which is
a water use caution area. Because the 48 Estates system is too
small to be regulated by SJRWMD, it has no consumptive use permit.
In its application, AquaSource has requested to add nine customers
that were connected outside of its certificated territory within

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the past four years. AquaSource began serving the territory without prior Commission approval, which is an apparent violation of Section 367.045, Florida Statutes.

Show Cause

As previously discussed, AquaSource is serving nine customers outside of its certificated territory. Section 367.045(2), Florida Statutes, states, in part:

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.

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. In serving outside of its certificated territory without obtaining an amended certificate of authorization, the utility's act was "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, Florida Administrative Code, 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 "[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."

Although AquaSource's failure to obtain our approval prior to serving outside of its certificated service area is an apparent violation of Section 367.045(2), Florida Statutes, there are circumstances which appear to mitigate the utility's apparent violation. The nine customers AquaSource is serving outside of its territory are located immediately adjacent to AquaSource's service area. Seven of the customers have been served since September 28, 1999, and two have been served since October 4, 2000. When the customers were connected, AquaSource believed they were within its service area due to their location. In addition, it should also be

noted that there is no other utility in the area interested in serving these customers.

Believing that the nine customers were located within its service area, AquaSource has paid all the necessary regulatory assessment fees for the additional area. Furthermore, upon becoming aware that the customers were not located within its certificated territory, AquaSource filed an application for amendment of its certificate to include the additional area.

We do not believe that the apparent violation of Section 367.045, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, we do not find it appropriate to order AquaSource to show cause for failing to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

Application

Except as discussed previously, the application is in compliance with Section 367.045, Florida Statutes. In particular, the application contains a filing fee in the amount of \$100 pursuant to Rule 25-30.020, Florida Administrative Code. The application also includes evidence that the utility owns the land upon which its facilities are located, in accordance with Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and territory descriptions have been provided, as prescribed by Rule 25-30.036(3)(e), (f), and (i), Florida Administrative Code. A description of the area requested is shown on Attachment A of this Order. A description of the territory served by the 48 Estates system is shown on Attachment B of this Order.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No protests to the application have been filed and the time for filing such has expired.

With respect to technical ability, AquaSource has three licensed operators, a regional controller, and a controller.

Further, from information provided with the application, the utility has the financial ability to provide service to the additional territory.

The 48 Estates water system consists of one 4-inch well, a liquid chlorination system and a 3,000 gallon hydropneumatic tank. According to the Department of Environmental Protection (DEP), the average daily water use in 2002 was about 22,677 gallons per day (gpd). The highest maximum demand in may of 2002 was 48,000 gpd. The rated capacity of the water system was determined by DEP to be 57,600 gpd. Therefore, the system has the capacity to continue to provide service to the additional territory. The water lines have already been constructed to the area requested. In addition, DEP has no outstanding notices of violation against the water system.

Based on the foregoing, we find that it is in the public interest to amend Certificate No. 441-W, held by AquaSource, to include the territory shown on Attachment A of this order, which by reference is incorporated herein. Also, the territory served by the 48 Estates system is shown on Attachment B of this Order, which by reference is incorporated herein. AquaSource has returned Certificate No. 441-W to this Commission for entry reflecting the territory added herein. In addition, AquaSource has filed tariff sheets reflecting the additional territory. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

Rates and Charges

AquaSource's rates and service availability charges were last set by Order No. PSC-95-0474-FOF-WU, issued April 23, 1995, in Docket No. 941107-WU. The rates have since been increased pursuant to price index rate adjustments. AquaSource 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. 441-W, held by AquaSource Utility, Inc., 411 Seventh Avenue, Pittsburgh, Pennsylvania 15219, is hereby amended

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to include the territory shown on Attachment A of this Order, which by reference is incorporated herein. A description of the territory served by the 48 Estates system is shown on Attachment B of this Order, which by reference is incorporated herein. It is further

ORDERED that AquaSource Utility, Inc. shall continue to charge the customers in the territory added here the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that a show cause proceeding shall not be initiated against AquaSource Utility, Inc. for providing service to customers outside of its service area without prior Commission approval. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 23rd Day of May, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

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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 Director, Division of the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.

AQUASOURCE UTILITY, INC.
Territory Description
48 Estates Service Area
Lake County

48 Estates Service Area to be added:

Beginning at the Southwest corner of Section 12, Township 19 South, Range 25 East, Lake County, run North 639 feet to the South boundary of Moore Street; thence East along Moore Street, 430 feet to the Northwest corner of Lot 16, Block C, Hilltop Subdivision, for a POINT OF BEGINNING.

From the POINT OF BEGINNING run North 11° West 50 feet to the North boundary of Moore Street and the Southwest corner of Lot 15, Block A, Hilltop Subdivision; thence on the East boundary of Hunt Avenue North 280 feet to the South boundary of Lackabee Street; thence East 400 feet; thence South 140 feet; thence West 100 feet; thence South 140 feet to the North boundary of Moore Street; thence East along Moore Street 200 feet; thence South 190 feet to the Southeast corner of Lot 8, Block A, Hilltop subdivision, Unit 3; thence West 260 feet to the West boundary of Hunt Avenue South; thence South along Hunt Avenue South 100 feet; thence West 200 feet; thence North 105 feet; thence West 50 feet; thence North 140 feet to the POINT OF BEGINNING.

AQUASOURCE UTILITY, INC.
Territory Description
48 Estates Service Area
Lake County

48 Estates Composite Service Area:

Beginning at the Southeast corner of the Southwest 1/4 of Section 12, Township 19 South, Range 25 East, Lake County, run West 508 feet (to the East boundary of the Forty-Eight Estates) for a POINT OF BEGINNING.

From the POINT OF BEGINNING run South (into Section 13, Township 19 South, Range 25 East) a distance of 396 feet, thence West a distance of 792 feet to the East boundary of Haines Creek Road, thence North 13° West along Haines Creek Road a distance of 300 feet, thence North 44° West a distance of 225 feet (more or less) to the Southwest corner of Lot 2, Block B, Hilltop Subdivision; thence north a distance of 180 feet, thence East a distance of 75 feet, thence North a distance of 190 feet to the Southeast corner of Lot 4, Block A, thence west a distance of 410 feet to the West boundary of Hunt Avenue South; thence South along Hunt Avenue South a distance of 100 feet to the Southeast corner of Lot 10, Block C, Hilltop Subdivision, Unit 3; thence West a distance of 200 feet; thence North a distance of 105 feet thence West 50 feet; thence North a 140 feet to the South boundary of Moore Street; thence North 10° West 50 feet to the Southwest corner of Lot 15 Block A, Hilltop Subdivision; thence North 280 feet on the East boundary of Hunt Avenue to the South boundary of Lackabee Street; thence run East a distance of 916 feet to the East boundary of Haines Creek Road, thence North along Haines Creek Road a distance of 100 feet; thence East a distance of 1300 feet; thence South a distance of 200 feet, thence West a distance of 220 feet, thence South a distance of 130 feet, thence West a distance of 193 feet, thence South a distance of 100 feet, thence East a distance of 100 feet, thence South a distance of 105 feet, thence West a distance of 100 feet, thence South a distance of 180 feet, thence West a distance 100 feet (to the East boundary of Forty-Eight Estates), thence South along the East boundary of Forty-Eight Estates a distance of 370 feet (more or less) to the POINT OF BEGINNING.