

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of Certificates 405-W and 342-S to add territory located in Marion County, by Tradewinds Utilities, Inc.	DOCKET NO. 090417-WS ORDER NO. PSC-10-0020-FOF-WS ISSUED: January 7, 2010
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The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
NANCY ARGENZIANO
NATHAN A. SKOP
DAVID E. KLEMENT

ORDER AMENDING CERTIFICATES TO INCLUDE ADDITIONAL TERRITORY AND
CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Tradewinds Utilities, Inc. (Tradewinds or Utility) is a Class B water and wastewater utility in Marion County. By Order No. 12184, issued July 1, 1983, the Commission granted water and wastewater certificates to the Utility.¹ There have also been multiple certificate amendments that have occurred over the years (see Attachment A). On August 21, 2008, the Utility filed an application with the Commission to amend Certificate Nos. 405-W and 342-S to add water and wastewater territory in Marion County, pursuant to Section 367.045(2), Florida Statutes (F.S.). Tradewinds provides service to approximately 506 water connections and 279 wastewater connections. The Utility is in the St. Johns River Water Management District.

This application was filed in response to a recent review of the Utility's service territory which revealed that the Utility is currently providing service to approximately 147 water connections and 146 wastewater connections located outside its certificated territory. The Utility has indicated that service to these residential and commercial customers started in 1992. Citing confusion over the resolution of previously docketed matters with this Commission, the Utility unintentionally failed to follow through with the amendment process. Shortly after it obtained notice that it was serving outside of its territory, Tradewinds filed its amendment of Certificate Nos. 405-W and 342-S to extend water and wastewater service to include those customers it is already serving. The proposed amended areas are located in close proximity to Tradewinds' existing Commission approved service territories. We have jurisdiction to address the amendment application pursuant to Section 367.045, F.S.

¹ Order No. 12184, issued July 1, 1983, in Docket No. 830110-WS, In re: Application of Tradewinds Utilities, Inc., for original water and sewer certificates to operate a utility in Marion County, Florida.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

DECLINING TO INITIATE A SHOW CAUSE PROCEEDING

As stated above, Tradewinds is serving customers outside of its certificated water and wastewater territories in apparent violation of Section 367.045(2), F.S. 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 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 per day 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.

Utilities are charged with the knowledge of our statutes and rules. Thus, any intentional act, such as Tradewinds providing water service to the public for compensation since 1992, without first obtaining a certificate of authorization from this Commission, would meet the standard for a “willful violation” of Section 357.161(1), 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). Additionally, “it 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).

Although Tradewinds’ failure to obtain an amended certificate of authorization 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, Tradewinds filed the instant application to correct the mistake and include the territory to its service area. Additionally, the Utility has paid regulatory assessment fees (RAFs) on these customers.

Under these circumstances, we do not find the apparent violation of Section 367.045, F.S., rises to the level which warrants the initiation of a show cause proceeding. Therefore, we shall not order Tradewinds to show cause for failure to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

APPROVING AMENDMENT OF CERTIFICATES

Tradewinds' application is in compliance with the governing statute, Section 367.045, F. S., and Rule 25-30.036, F.A.C. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C.

We find that the Utility has demonstrated its ability to serve the proposed extended areas and that it has the necessary financial and technical expertise to do so. In addition, the Utility has indicated that its current water and wastewater systems have sufficient capacity to serve the proposed areas. Our staff has contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation issued for Tradewinds' water and wastewater treatment facilities.

The Utility provided verification of a deed to the water treatment plant sites. Adequate service territory maps and territory descriptions have also been provided. No objections to the application have been received and the time for filing such has expired. The Utility is currently providing service to approximately 147 water connections and 146 wastewater connections located outside its certificated territory. The Utility has indicated that service to these residential and commercial customers started in 1992. Until recently, the Utility had assumed that the proposed areas had always been within the certificated areas authorized by this Commission. The Utility has indicated that throughout this time period, the calculation of the annual RAFs for Tradewinds was inclusive of all of these customers. The Utility has filed revised tariff sheets incorporating the additional territories into its tariff.

Based on the foregoing, we find that it is in the public interest to approve the application filed by Tradewinds to amend its territory to reflect the area described in Attachment A. Composite territory descriptions which reflect the combined existing and amended areas are also included in Attachment A. This Order shall serve as Tradewinds' amended certificates and shall be retained by the Utility. The Utility shall charge the customers in the territory added herein the rates and charges contained in the current tariff until authorized to change by this Commission. In addition, the Utility shall file revised tariff sheets that incorporate the additional territories within thirty days from the date of this Order approving the amendment.

Based on the foregoing, it is

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

ORDERED that Tradewinds Utilities, Inc.'s application for amendment of Certificate Nos. 405-W and 342-S is hereby approved, and its certificates shall be amended to include the territory described in Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that this Order shall serve as Tradewinds Utilities, Inc. amended certificates and shall be retained by the Utility. It is further

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ORDERED that Tradewinds Utilities, Inc. shall charge the customers in the territory added herein the rates and charges contained in the current tariff until authorized to change by this Commission. It is further

ORDERED Tradewinds Utilities, Inc. shall file revised tariff sheets that incorporate the additional territories within thirty days from the date of this Order approving the amendment. It is further

ORDERED that no further action is necessary and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of January, 2010.



ANN COLE
Commission Clerk

(SEAL)

KY

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.

ATTACHMENT A
Tradewinds Utilities, Inc.
Marion County
Description of Water and Wastewater Territory Added

COMMENCE AT THE EAST 1/4 CORNER OF SECTION 34, TOWNSHIP 14 SOUTH, RANGE 22 EAST, THENCE ALONG THE SOUTH BOUNDARY OF THE NE 1/4 OF SECTION 34, S 89-40-40 W, 40.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF N.E. 36TH AVENUE AND THE POINT OF BEGINNING; THENCE ALONG SAID WEST RIGHT-OF-WAY, N 00-29-46 W, 361.13 FEET; THENCE S 89-42-07 W, 622.06 FEET; THENCE S 89-40-40 W, 1986.23 FEET TO A POINT ON THE WEST BOUNDARY OF THE NE 1/4 OF SECTION 34; THENCE S 00-23-43 E, 361.39 FEET TO THE S.W. CORNER OF THE NE 1/4 OF SECTION 34; THENCE ALONG THE WEST BOUNDARY OF THE SE 1/4 OF SECTION 34; S 00-23-43 E, 304.53 FEET; THENCE N 89-44-44 E, 2608.53 FEET TO THE WEST RIGHT-OF-WAY OF N.E. 36TH AVENUE; THENCE ALONG SAID RIGHT-OF-WAY N 00-19-04 W, 307.59 FEET TO THE POINT OF BEGINNING. EXCEPT ANY PART LYING IN THE SOUTH 2337.67 FEET OF THE SE 1/4.

CONTAINING 39.97 ACRES, MORE OR LESS. A.K.A. COUNTRYSIDE ESTATES FIRST ADDITION

SEC 34 TWP 14 RGE 22 COM AT THE SW COR OF SEC 34 TH N 89-38-51 E 30 FT TH N 00-02-32 W 30 FT TH CONT N 00-02-32 W 185 FT TO THE POB TH CONT N 00-02-32 W 513.88 FT TH N 89-39-32 E 636.05 FT TH S 00-07-48 E 105.03 FT TH N 89-38-51 E 666.22 FT TH S 00-13-07 E 593.70 FT TH S 89-38-51 W 1119.36 FT TH N 00-02-32 W 185 FT TH S 89-38-51 W 185 FT TO THE POB & EXC RD ROW

CONTAINING 13.36 ACRES, MORE OR LESS. A.K.A. PEARL BRITAIN PLAZA

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Tradewinds Utilities, Inc.
pursuant to
Certificate No. 405-W

to provide wastewater service in Marion 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 suspended, suspended, canceled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
12184	07/01/83	830110-WS	Original
13238	04/27/84	840088-WU	Amendment
18312	10/19/87	870212-WS	SARC
19688	07/19/88	880552-WS	Amendment
PSC-93-0368-FOF-WS	03/09/93	921260-WS	Deletion
PSC-93-0900-FOF-WS	06/14/93	921260-WS	Amendment
PSC-98-0484-FOF-WS	03/06/98	971174-WS	Amendment
PSC-10-0020-FOF-WS	01/07/10	090417-WS	Amendment

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Tradewinds Utilities, Inc.
pursuant to
Certificate No. 342-S

to provide wastewater service in Marion 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 suspended, suspended, canceled or revoked by Order of this Commission.

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PSC-98-0484-FOF-WS	03/06/98	971174-WS	Amendment
PSC-10-0020-FOF-WS	01/07/10	090417-WS	Amendment