

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
certificate to provide water
service in Osceola County by
Morningside Utility Inc.

DOCKET NO. 970636-WU
ORDER NO. PSC-97-1211-FOF-WU
ISSUED: October 7, 1997

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER GRANTING CERTIFICATE, REQUIRING PAYMENT
OF 1996 REGULATORY ASSESSMENT FEES AND FILING OF
ANNUAL REPORT FOR 1996 AND DECLINING TO
INITIATE SHOW CAUSE PROCEEDINGS

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER SETTING RATES AND CHARGES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service
Commission that the action setting rates and charges discussed
herein is preliminary in nature and will become final unless a
person whose interests are substantially affected files a petition
for a formal proceeding, pursuant to Rule 25-22.029, Florida
Administrative Code.

Background

On May 28, 1997, Morningside Utility, Inc. (Morningside or
utility) filed an application with this Commission for a
certificate to provide water service in Osceola County, pursuant to
Section 367.045, Florida Statutes. Morningside is a Class C
utility which serves approximately 170 customers. The utility will

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serve approximately 187 customers when the system reaches build-out.

According to the application, the utility was established in 1983 by the developer, Schoolfield Properties. The utility's facilities include two wells and one water distribution system. The residents, which receive potable water from Morningside, receive wastewater service from septic tanks.

Morningside has never been certificated, nor found to be exempt from Commission regulation. The present owner, Mr. George Devillers, purchased the system in 1988 from Schoolfield Properties. The Commission became aware of the utility through contact with the Florida Department of Environmental Protection (DEP). Upon review of the operation of the utility system, the Commission staff determined the utility did not qualify for an exemption pursuant to Section 367.022, Florida Statutes, because of its capacity. Morningside was informed of the requirements of Sections 367.031 and 367.045, Florida Statutes, and of its apparent violation of those Statutes for providing service without a certificate. Morningside filed an application for a certificate on May 28, 1997.

Show Cause

As stated previously, Morningside Utility, Inc. is in apparent violation of Section 367.031, Florida Statutes, which states, in part, "Each utility subject to the jurisdiction of the commission must obtain . . . a certificate of authorization to provide water or wastewater service." Morningside was owned and operated by Schoolfield Properties until it was purchased by Mr. George Devillers, in 1988. Morningside has been providing water service to its customers since that time without a certificate. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, 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 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 "[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." Id. at 6.

Failure of Morningside to obtain a certificate prior to providing service appears to be due to lack of knowledge of the statutes and Commission rules. Mr. Devillers, the current owner, moved to Florida and bought the utility as an investment. Schoolfield Properties had been operating the system since 1983 without a certificate. At the time Mr. Devillers purchased the system from Schoolfield Properties, he had no knowledge of the Commission or its requirements. Mr. Devillers became aware of this Commission's regulation when DEP advised the utility that an additional well was needed to serve more customers. Upon being informed by the Commission staff of the requirements of Section 367.031, Florida Statutes, Morningside filed an application for a certificate.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not find that the violation of Section 367.031, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Therefore, a show cause proceeding will not be initiated against Morningside for failure to obtain a certificate prior to providing water service.

Application

The application is in compliance with Section 367.045, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$750, as prescribed by Rule 25-30.020, Florida Administrative Code.

Rule 25-30.033(1)(j), Florida Administrative Code, requires a utility to provide proof that it has continued use of the land upon which its facilities are located. Morningside provided a 99-year lease as evidence that it has continued use of the land upon which the facilities are located. However, the lease is not recorded. Therefore, we find it appropriate to require Morningside to record

the 99-year lease in accordance with Section 695.01, Florida Statutes, and to provide the Commission with a recorded copy of the lease within 60 days of the date of this Order.

Adequate service territory and system maps and a territory description have been provided as required by Rule 25-30.033(1)(l), (m), and (n), Florida Administrative Code. The territory which Morningside has requested to serve is described on Attachment A of this Order, which by reference is incorporated herein.

Morningside provided proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code, including notice to the customers in the proposed territory. No objections to the application have been received and the time for filing such has expired.

Morningside has been in existence, providing water service to its customers since 1983. Mr. George Devillers, the current owner, has overseen the day to day operations of the utility since 1988, and has retained the services of a licensed operator. Therefore, we believe that Morningside has demonstrated that it has the technical ability to continue to provide service to its customers. It should be noted that Morningside is currently operating under a Consent Order. However, according to DEP, Morningside is making the additions required by DEP in a satisfactory and timely manner. With regard to Morningside's financial ability, according to information provided with the application, Morningside has the financial ability to continue to provide service to its customers.

Based on the foregoing, we find that it is in the public interest to grant Morningside Certificate No. 595-W in Osceola County, to serve the territory shown on Attachment A of this Order.

Rates and Charges

Morningside's current rates and charges became effective prior to the current owner's purchase of the system in 1988. The utility's current rates and charges are as follows:

WATER
Monthly Service Rates

Residential and General Service

Base Facility Charge

Meter Size:

3/4" \$ 12.00

Consumption Rate

Per 1,000 Gallons \$ 2.20

Meter Test Charges

Meter Size:

5/8" x 3/4" \$ 20.00
1" and 1-1/2" \$ 25.00
2" and Greater Actual Cost

Miscellaneous Service Charges

Initial Connection \$ 15.00
Normal Reconnection \$ 15.00
Violation Reconnection \$ 15.00
Premises Visit \$ 10.00

Service Availability Charges

System Capacity Charge (Per Equivalent Residential Connection) \$600.00
Meter Installation Charge (5/8" x 3/4" Meter) \$ 65.00
Meter Installation Charge (Over 5/8" x 3/4" Meter) Actual Cost

Customer Deposits

Morningside does not require deposits.

We find these rates and charges to be reasonable and they are approved. Morningside shall continue to charge these rates and charges until authorized to change by this Commission in a subsequent proceeding. Morningside has submitted a tariff which reflects the rates and charges approved herein. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

1996 Regulatory Assessment Fees and Annual Report

Pursuant to Rule 25-30.110(3), Florida Administrative Code, "[t]he obligation to file an annual report for any year shall apply to any utility which is subject to this Commission's jurisdiction as of December 31 of that year, whether or not the utility has actually applied for or has been issued a certificate." Additionally, Rule 25-30.120(2), Florida Administrative Code, states "any utility which is subject to this Commission's jurisdiction on or before December 31 of that year or any part of that year, whether or not the utility has actually applied for or has been issued a certificate" is required to pay regulatory assessment fees. Therefore, we find it appropriate to require Morningside to pay regulatory assessment fees for 1996 and file a 1996 annual report within 45 days of the date of this Order. Morningside is also put on notice that annual reports and regulatory assessment fees are due each year, pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Morningside Utility, Inc., 1106 Monroe Avenue, St. Cloud, Florida 34769, is hereby granted Certificate No. 595-W in Osceola County to serve the territory shown on Attachment A of this Order. It is further

ORDERED that Morningside Utility, Inc. shall record the 99-year lease in accordance with Section 695.01, Florida Statutes, and file a copy of the recorded lease for the land upon which the utility's facilities are located within 60 days of the date of this Order. It is further

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ORDERED that Morningside Utility, Inc. shall charge the rates and charges approved in the body of this Order until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that the tariff, reflecting the rates and charges approved herein, 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 Morningside Utility, Inc. shall pay regulatory assessment fees for 1996 and file a 1996 annual report, pursuant to Rules 25-30.110 and 25-30.120, Florida Administrative Code, within 45 days of the date of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of October, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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.

As identified in the body of this order, our action setting rates and charges is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 28, 1997. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of

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Records and Reporting 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 of the effective date 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.

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 Records and Reporting 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 or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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

Morningside Utility, Inc.

TERRITORY DESCRIPTION

The following described lands located in portions of Section 3, Township 25 South, Range 30 East, Osceola County, Florida:

Beginning at the Northeast corner of Section 3, Township 25 South, Range 30 East, Osceola County, Florida, also being the Northeast corner of Lot 124, Morningside Village, Unit Four, as filed and recorded in Plat Book 5, Page 185 of the Public Records of Osceola County, Florida, run North $88^{\circ} 57' 45''$ West, along the North line of said Section 3, 1991.94 feet to the Northwest corner of Lot 163, Morningside Village, Unit Five, as filed and recorded in Plat Book 6, Page 1 of the Public Records of Osceola County, Florida; run thence South $00^{\circ} 58' 04''$ West, along the West line of aforesaid Morningside Village, Unit Five, 655.51 feet to the Southwest corner of Lot 159 of aforesaid Morningside Village, Unit Five; run thence South $88^{\circ} 46' 09''$ East, along the South line of said Morningside Village, Unit Five, 662.73 feet to the Northwest corner of Lot 10, Morningside Village, Unit One, as filed and recorded in Plat Book 4, Page 84 of the Public Records of Osceola County, Florida; run thence South $00^{\circ} 58' 29''$ West, along the West line of aforesaid Morningside Village, Unit One, 1337.02 feet to the Southwest corner of Lot 1 of aforesaid Morningside Village, Unit One; run thence along the South line of said Morningside Village, Unit One the following: South $89^{\circ} 01' 31''$ East, 175.00 feet; North $25^{\circ} 05' 45''$ East, 73.41 feet to a point on a 50.00 feet radius curve, concave Northwesterly; run thence Northeasterly along said 50.00 feet radius curve, through a central angle of $98^{\circ} 02' 52''$, an arc distance of 85.56 feet (Chord bearing North $41^{\circ} 57' 03''$ East, Chord = 75.50 feet) to the Southwest corner of Lot 19 of said Morningside Village, Unit One; run thence South $89^{\circ} 01' 31''$ East, along the South line of said Lot 19, 155.49 feet to the Southeast corner of said Morningside Village, Unit One, said point being a point on the West line of Morningside Village, Unit Two, as filed and recorded in Plat Book 4, Page 85 of the Public Records of Osceola County, Florida; run thence South $00^{\circ} 58' 29''$ West, along said West line of Morningside Village, Unit Two, 37.00 feet to the

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Southwest corner of said Morningside Village, Unit Two; run thence South $89^{\circ} 01' 31''$ East, along the South line of said Morningside Village, Unit Two, 126.01 feet to a point on a 50.00 feet radius, concave Northwesterly; run thence Southeasterly along said 50.00 feet radius, through a central angle of $101^{\circ} 32' 13''$, an arc distance of 88.61 feet (Chord bearing South $38^{\circ} 15' 24''$ East) to a point on the West line of Lot 44 of said Morningside Village, Unit Two; run thence South $00^{\circ} 58' 29''$ West, 35.00 feet; continue thence along aforesaid South line of Morningside Village, Unit Two, the following: South $89^{\circ} 01' 31''$ East, 145.00 feet; South $00^{\circ} 58' 29''$ West, 100.00 feet South $89^{\circ} 01' 13''$ East, 290.00 feet to the Southwest corner of Lot 73, Morningside Village, Unit Three, as filed and recorded in Plat Book 5, Page 84 of the Public Records of Osceola County, Florida; run thence along the South line of said Morningside Village, Unit Three, the following: South $89^{\circ} 01' 31''$ West, 63.00 feet; South $00^{\circ} 58' 29''$ West, 133.00 feet; South $89^{\circ} 01' 31''$ East, 237.83 feet to the Southeast corner of said Morningside Village, Unit Three, said corner being on the East line of aforesaid Section 3; run thence North $01^{\circ} 11' 59''$ East, along said East line, 2234.32 feet to the Point of Beginning.