

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment
of Certificate No. 595-W to add
territory in Osceola County by
Morningside Utilities, Inc.

DOCKET NO. 990247-WU
ORDER NO. PSC-99-1810-FOF-WU
ISSUED: September 20, 1999

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS, AMENDING
CERTIFICATE NO. 595-W TO INCLUDE ADDITIONAL TERRITORY, AND
CLOSING DOCKET

BY THE COMMISSION:

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, Florida. 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.

SHOW CAUSE

On March 3, 1999, Morningside applied for an amendment to Water Certificate No. 595-W in Osceola County. Morningside 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. At the time the amendment application was filed, the utility was not

DOCUMENT NUMBER-DATE
11236 SEP 20 99
PSC RECORDS/REPORTING

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. Our 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 serve an additional twelve single family residential customers by August 23, 1999.

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 us 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.

According to the utility, it was necessary for the parties 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.

We find that 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, 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 application for transfer of majority organizational control in Docket No. 990248-WU.

In consideration of the foregoing, we do 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, Morningside shall not be ordered to show for failing to comply with Section 367.045(2), Florida Statutes.

APPLICATION

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 previously noted, 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 Order as Attachment A, which is incorporated herein by reference. The utility 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. We have contacted the Florida Department of Environmental Protection (FDEP), which stated that the utility has been inspected recently and was found to be in satisfactory working condition and in compliance with environmental rules.

The existing water lines are 12 inch lines from the water treatment plant that reduce down to 8 and 6 inch lines. 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 expected to place a demand of 10,710 gpd. Therefore, the system has adequate water capacity.

The owner submitted financial statements as part of the application, and they 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. Based on the above information, we find that the utility has demonstrated the financial and technical expertise to provide quality service to these customers.

Therefore, we find that it is in the public interest to grant Morningside's application for amendment of Water Certificate No. 595-W to add the additional territory described in Attachment A. Morningside's Commission-approved rates and charges shall be applied to the customers in the territory added herein. The utility has filed revised tariff sheets incorporating the additional territory into its tariff and returned its certificate for entry reflecting the additional territory.

Since no further action is necessary, this docket shall be closed.

ORDER NO. PSC-99-1810-FOF-WU
DOCKET NO. 990247-WU
PAGE 5

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated against Morningside Utilities, Inc. for apparent violation of Section 367.045(2), Florida Statutes. It is further

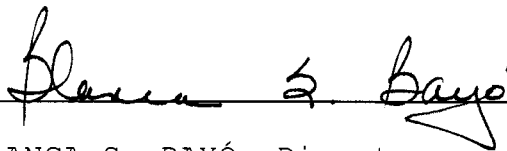
ORDERED that Morningside Utilities, Inc.'s Application for Amendment of Certificate No. 595-W to add territory in Osceola County is approved. It is further

ORDERED that Certificate No. 595-W, held by Morningside Utilities, Inc., 1106 Monroe Avenue, St. Cloud, Florida 34769, is hereby amended to reflect the additional territory shown on Attachment A of this Order, which is incorporated herein by reference. It is further

ORDERED that Morningside Utilities, Inc. 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 further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 20th Day of September, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SAC

ORDER NO. PSC-99-1810-FOF-WU
DOCKET NO. 990247-WU
PAGE 6

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 Records and Reporting, 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 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.

ORDER NO. PSC-99-1810-FOF-WU
DOCKET NO. 990247-WU
PAGE 7

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.

Requisition for Photocopying and Mailing

Date 9, 21, 99
Number of Originals 7 Copies Per Original 19
Requested By [Signature]

Item Presented
Agenda For (Date) _____ Order No. 99-1810 In Docket No. 990247
Notice of _____ For (Date) _____ In Docket No. _____
Other _____

Special Handling Instructions _____

Distribution/Mailing		Distribution/Mailing	
Number	Distributed/Mailed To	Number	Distribution/Mailed To
<u>19</u>	<u>Commission Offices</u>	<u>--</u>	<u>[Signature]</u>
<u>(1)</u>	<u>Docket Mailing List - Mailed</u>		
	<u>Docket Mailing List - Faxed</u>		

Note: Items must be mailed and/or returned within one working day after issue unless specified here:

Print Shop Verification
Job Number 215 Verified By [Signature]
Date and Time Completed 9/22 Job Checked For Correctness and Quality (Initial) [Initial]

Mail Room Verification
Date Mailed / Verified By /

M E M O R A N D U M

September 17, 1999

3:15

RECEIVED RFPSC

SEP 17 PM 2:01

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CROSSMAN) *see 103*

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

1810 - FOF

Attached is an ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS, AMENDING CERTIFICATE NO. 595-W TO INCLUDE ADDITIONAL TERRITORY, AND CLOSING DOCKET, to be issued in the above-referenced docket.

(Number of pages in order - 7)

SAC/lw

Attachment

cc: Division of Water and Wastewater (Redemann)

I:990247OR.SAC

10