

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment
of Certificate No. 363-W to add
territory in Marion County by
Sunshine Utilities of Central
Florida, Inc.

DOCKET NO. 980543-WU
ORDER NO. PSC-99-2390-FOF-WU
ISSUED: December 7, 1999

The following Commissioners participated in the disposition of
this matter:

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

ORDER ACKNOWLEDGING WITHDRAWAL OF PORTION OF
APPLICATION AND WITHDRAWAL OF PROTEST, DECLINING
TO INITIATE SHOW CAUSE PROCEEDINGS, APPROVING
AMENDMENT OF CERTIFICATE AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Sunshine Utilities of Central Florida, Inc. (Sunshine Utilities or utility) is a Class B utility operating under the Commission's jurisdiction. The utility provides water service to approximately 1,316 customers in Marion County. The wastewater service is provided by septic tanks. The utility's 1998 annual report shows an annual operating revenue of \$725,690 and a net operating income of \$55,704.

Pursuant to Section 367.045, Florida Statutes, on April 21, 1998, the utility applied for an amendment to Water Certificate No. 363-W in Marion County, Florida. This application traverses service territory of eighteen (18) non-centralized communities. The utility proposes to correct territory descriptions, add territory that it is currently serving outside its approved service area, and add new territory that is adjacent to several of its current water systems. On May 28, 1998, the utility filed a second application which was to expand the service area of the Oakhaven community. The two amendment applications were merged. On June 3, 1998, a letter objecting to Sunshine's request for extension of service was timely filed by Ms. Carol Masters, a resident of the service area which was the subject of the second amendment application. By Order No. PSC-98-1273-PCO-WU, issued August 30,

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1998, the matter was scheduled for an administrative hearing. On November 20, 1998, Sunshine Utilities filed a letter requesting to withdraw its request to extend service to the area to the Oakhaven community, including a territory description and map of that area. In light of the withdrawal of the request to serve the Oakhaven community, Ms. Masters stated in conversations with staff that she therefore wished to withdraw her objection to Sunshine Utilities' application. By memo dated December 4, 1998, the Chairman's office canceled the administrative hearing which was scheduled in the matter.

ACKNOWLEDGING WITHDRAWAL OF PORTION OF
APPLICATION AND WITHDRAWAL OF PROTEST

As stated previously, on November 20, 1998, Sunshine Utilities filed a notice withdrawing its request to extend service to and around the Oakhaven community. In the past with cases such as this, we have formally acknowledged such notices of withdrawal. In In Re: Application for amendment of Certificate No. 249-S In Volusia County by North Peninsula Utilities Corporation, Order No. PSC-94-1352-FOF-SU, issued November 7, 1994, in Docket No. 930851-SU, we acknowledged the utility's notice to withdraw its application when the utility was not currently serving the additional territory, even though objections to the application were pending. Moreover, In In Re: Application for amendment of Certificate No. 427-W to add territory in Parcels A, B, C, D, and E in Marion County by Windstream Utilities Company, Order No. PSC-97-0095-FOF-WU, issued January 27, 1997, in Docket No. 930851-SU, we acknowledged the utility's notice to withdraw its application, despite pending objections, when we had not yet taken any action on the application. Furthermore, In In Re: Application by Rampart Utilities, Inc. for amendment of Certificate No. 497-S in Charlotte County to extend territory to service San Antonio Catholic Church, Order No. PSC-99-0025-FOF-SU, issued January 4, 1999, in Docket No. 980887-SU, we acknowledged the withdrawal of the utility's application, despite a pending objection, when we had not yet taken action on the utility's application and the utility was not currently serving the requested territory.

We have not yet taken action on Sunshine Utilities' application for amendment. The utility is not currently serving the extension to the Oakhaven territory. Furthermore, Ms. Masters has stated to staff that the cause of her objection would be removed if the utility were to withdraw its request to serve this area.

Thus, we hereby acknowledge Sunshine Utilities' notice of withdrawal of the portion of its application by which sought to amend its certificate to include service to the Oakhaven territory. As a consequence of acknowledging the withdrawal of that portion of Sunshine Utilities' application, we also acknowledge the withdrawal of Ms. Masters' protest to the utility's amendment application.

SHOW CAUSE

As stated in the case background, Sunshine Utilities is serving customers outside of its certificated territory. Section 367.045(2), Florida Statutes, states that:

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 [C]ommission.

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., having found that the company had not intended to violate the rule, we 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 the utility's failure to obtain an amended certificate of authorization prior to serving outside of its certificated area is an apparent violation of Section 367.045(2), Florida Statutes, according to its application, the utility erroneously believed that the territory in question was included in its service area. When the error was discovered, the utility filed the instant application to correct the mistake and include the territory to its service 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 find that Sunshine Utilities shall not be ordered to show cause for failure to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

AMENDMENT OF CERTIFICATE

On April 21, 1998, the utility applied for an amendment to Water Certificate No. 363-W in Marion County, Florida. This application traverses service territory of approximately eighteen (18) non-centralized communities. The purpose of this amendment application is to correct territory descriptions that were written incorrectly and territory descriptions that did not include areas that are presently being serviced by the utility, which the utility never added to their existing service area. In addition, Sunshine Utilities visualized the potential for growth in areas adjacent to its service area borders and the utility believed that it would be advantageous to extend its service boundaries to meet the potential growth.

This 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 \$1,750 which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.036(1)(d), Florida Administrative Code.

Adequate service territory and system maps and territory descriptions have been provided as prescribed by Rule 25-30.036(1)(e), (f) and (i), Florida Administrative Code. A description of the territory requested by the utility is appended to this Order as Attachment A. The utility has filed 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. The local planning agency was provided notice of the application and did not file a protest to the amendment.

With the exception of the protest filed by Ms. Masters, no objections to the application were received. As discussed previously, we have acknowledged the withdrawal of Ms. Masters objection with respect to Sunshine Utilities' amendment application. The utility states that its water service requirements, in all of its current and proposed service territories, is or will be consistent with the local comprehensive plan as approved by the Department of Community Affairs. The utility states that it is presently providing and can continually provide service to the proposed service area.

The utility has been in existence since 1974, and now provides water service to approximately eighteen communities. The utility appears to have sufficient plant capacity to support this expansion, and the addition of these customers will only add to the stability of the company by increasing its customer base. In addition, the construction of additional water plant is not necessary to provide adequate water service to the purposed new customers.

The utility's operator, Mr. Kelvin Edun, holds a Class C drinking water permit, and his license number is C-7459. The Department of Environmental Protection has no outstanding notices of violation issued for this system. The new customers will demand approximately .461 million gallons per day (gpd) of potable water. The utility currently has eighteen (18) water treatment plants which are authorized to withdraw 1.56 million gallons of water per day, and a maximum daily design withdrawal capacity of 3.72 million gallons per day (mgd). Therefore, it is apparent that the utility has the water treatment capacity to serve these customers. Consequently, we believe the utility has demonstrated the financial and technical expertise to provide quality service to these customers. 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, we find that it is in the public interest to grant the application for an amendment to Water Certificate No. 363-W to Sunshine Utilities of Central Florida, Inc. for the territory described in Attachment A, and the application is hereby approved.

Based upon the above, no further action is required and the docket shall be closed.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the withdrawal of the portion of Sunshine Utilities of Central Florida, Inc., whereby it seeks to serve the Oakhaven territory, is acknowledged. It is further

ORDERED that the withdrawal of Ms. Master's protest is acknowledged. It is further

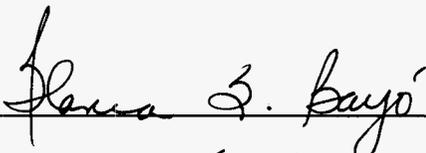
ORDERED that Sunshine Utilities of Central Florida, Inc.'s application for amendment of certificate, as amended or set forth in the body of this Order, is hereby approved. It is further

ORDERED that Certificate No. 363-W, held by Sunshine Utilities of Central Florida, Inc., is hereby amended to include the territory described in Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that Sunshine Utilities of Central Florida, Inc., shall not be required to show cause for violation of Section 367.045(2), Florida Statutes. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 7th Day of December, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

JSB

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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 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.

ATTACHMENT A

SUNSHINE UTILITIES OF CENTRAL FLORIDA, INC.

TERRITORY DESCRIPTION - MARION COUNTY

Township 14 South, Range 22 East

Section 34

PEARL BRITTAIN:

The North 1/2 of the Southeast 1/4 of the Southwest 1/4 of said section 34.

SUNLIGHT ACRES

The West 1/2 of the Northeast 1/4 of said section 10.

SECTION 14 & 16 TOWNSHIP 14 South Range 22 East

LITTLE LAKE WIER:

The South 1/2 of the Northwest 1/4 of said Section 15 and the Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of said Section 15 and the West 1/2 of the Northwest 1/4 of the Southwest 1/4 of said Section 15 and the Northeast 1/4 of the Southwest 1/4 of said Section 16 and the Southeast 1/4 of the Northeast 1/4 of Section 16 and the East 1/2 of the Southwest 1/4 of the Northwest 1/4 of said Section 16.

Section 34 Township 14 South, Range 22 East

BOULDER HILL:

The Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of the South 1/2 of the Southeast 1/4 of the Northeast 1/4 and the Southwest 1/4 of said Section 34.

Section 21 Township 14 South, Range 22

FOX MOUNTAIN (Now known as Sun Resorts)

The West 1/2 of the Southeast 1/4 of the Northwest 1/4 and the Southwest 1/4 of the Southeast 1/4 of the Northwest 1/4 of said Section 21.

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Sections 4,5,6,9,and 16
OCKLAWAHA

The North 1/2 of Section 9

AND

The South 1/2 and the Northwest 1/4 of said Section 4

AND

All of Section 5 North of Lake Weir

AND

The East 1/2 the Northeast 1/4 of said Section 6 North of Lake Weir

AND

The East 1/4 of the West 1/2 of the Northeast 1/4 of said Section
6

AND

The Southwest 1/4 of the Southeast 1/4 of said Section 32 and the
Southeast 1/4 of the Southwest 1/4 of said Section 32.

Section 32 Township 16 S Range 23 E
BELLEVIEW OAKS I & II

The East 1/2 the Southeast 1/4 of the Northwest 1/4 and the West
1/2 the Southwest 1/4 of the Northeast 1/4 and the South 1/2 the
Northwest 1/4 of the Northwest 1/4 of said Section 32.

Section 29 Township 14 S Range 22 E
ASHLEY HEIGHTS

The West 1/2 the Northeast 1/4 of the Southeast 1/4 of said Section
29.

Section 29 Township 14 S Range 22 E
COVENTRY

The South 1/2 the Northwest 1/4 of the North 1/2 the Southwest 1/4
of said Section 29

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Section 6 and 31 Township 15 S Range 25 E
WINDING WATERS

The Southeast 1/4 of the Southeast 1/4 of Section 31

AND

All of said Section 6.

Section 32 Township 14 S Range 22 E
NORTHWOODS

The Southeast 1/4 of the Southeast 1/4 of said Section 32

SECTION 31 TOWNSHIP 14 SOUTH RANGE 22 EAST
BALLARD ACRES

The North 1/2 of the Northwest 1/4 of the North 1/2 of the
Southwest 1/4 of the said Section 29.

SECTION 18 TOWNSHIP 15 SOUTH RANGE 23 EAST
SILVERWOOD VILLAS

The Southeast 1/4 of the Northeast 1/4 and The Northeast 1/4 of the
Southeast 1/4 of said Section 18.

SPANISH PALMS AND COUNTRY AIRE

The Northwest 1/4 of the Northeast 1/4 of said Section 18.

SECTION 9 TOWNSHIP 17 SOUTH RANGE 23 EAST
COUNTRY WALK

The South 1/2 of the Northwest 1/4 of said Section 6.

SECTION 2 TOWNSHIP 17 SOUTH RANGE 23 EAST
HILLTOP

The Northwest 1/4 of the Southwest 1/4 of said Section 2.