

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. 991681-WU  
ORDER NO. PSC-00-1062-FOF-WU  
ISSUED: June 2, 2000

The following Commissioners participated in the disposition of  
this matter:

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

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDING, AMENDING  
CERTIFICATE TO DELETE INCORRECT TERRITORY DESCRIPTION AND TO  
INCLUDE ADDITIONAL TERRITORY AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Sunshine Utilities of Central Florida, Inc. (Sunshine or  
utility) is a Class B utility which provides water service to  
approximately 2871 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 November 5,  
1999, the utility applied for an amendment to Water Certificate No.  
363-W to correct a previous territory description and to add a  
small subdivision. On February 28, 2000, the utility filed a  
second application which corrected the territory description and  
properly deleted certain incorrect territory.

SHOW CAUSE

Sunshine is attempting to correct the Oakhaven territory  
description that had been previously approved by Order No. 14978,

DOCUMENT NUMBER-DATE  
06743 JUN-28  
FPSC-RECORDS/REPORTING

issued September 20, 1985, in Docket No. 840089-WU. The utility believes that the original description was incorrect and determined the error when reviewing its maps. The simplest way to correct the error is to delete all the territory referring to the Oakhaven subdivision and add the correct territory of the Oakhaven subdivision. Additionally, Sunshine has filed for an extension to include a small subdivision known as Evans Acres. No customers are being served in Evans Acres at this time.

The additional territory includes customers in Oakhaven that Sunshine has been serving since 1985. By serving customers outside of its certificated territory, Sunshine is in apparent violation of Section 367.045(2), Florida Statutes, which states:

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 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, or any lawful rule or order of this Commission.

Utilities are charged with the knowledge of Commission rules and statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, entitled 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., having found that the company had not intended to violate the rule, the Commission 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. 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).

By serving outside of its certificated territory, Sunshine's act was willful in the sense intended by Section 367.161, Florida Statutes. Although the utility's failure to comply with Section 367.045(2), Florida Statutes, could be said to be willful, we find that the utility's actions do not rise in these circumstances to the level which warrants the initiation of a show cause proceeding.

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As soon as the utility became aware of the inaccurate territory description, it immediately filed this application to correct it. Therefore, Sunshine shall not be ordered to show cause for its apparent violation of Section 367.045(2), Florida Statutes.

#### APPLICATION

On November 5, 1999, the utility applied for an amendment to Water Certificate No. 363-W in Marion County, Florida. As previously noted, the purpose of this amendment application is to correct a territory description that was part of Order No. 14978, and to provide service to a small subdivision called Evans Acres.

On March 1, 2000, the utility filed a second application to properly delete the incorrect area. The utility revised the incorrect territory description which was noticed in this proceeding, and renoticed. This second application is included in this docket.

These applications are in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning applications for amendment of certificate. These applications contain checks in the amount of \$600 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 its 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 to be deleted and added by the utility is appended hereto 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 this 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. 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

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Department of Community Affairs. The utility states that it has been providing and can continually provide service to the proposed service area.

The utility indicates that this extension will not have a substantial impact on the monthly rates and charges, since there will be only six new customers in the Evans Acres Subdivision. This project will not be financed. The utility will receive impact fees. Sunshine will extend a line across the road to serve this subdivision.

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 water system produces an average of 27,000 gallons per day (gpd) of potable water. The water treatment plant's maximum design capacity is 288,000 gpd. Therefore, it is apparent that the utility can continue to provide water service to its existing customers and to the small subdivision called Evans acres. Consequently, we find that the utility has demonstrated the financial and technical expertise to provide quality service to these customers.

The rates and charges approved by this Commission shall be applied to customers in the new service territory. 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 Sunshine's application for an amendment to expand its territory is in the public interest and it is hereby granted, as described in Attachment A. The incorrect territory description, as described in Attachment A to Water Certificate No. 363-W shall be deleted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application for amendment of Certificate No. 363-W in Marion County by Sunshine Utilities of Central Florida, Inc. is hereby approved. It is further

ORDERED that a show cause proceeding shall not be initiated against Sunshine Utilities of Central Florida, Inc., for apparent violation of Section 367.045(2), Florida Statutes. It is further

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ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that Attachment A, attached to this Order, is incorporated herein by reference. It is further

ORDERED that Sunshine Utilities of Central Florida, Inc. shall charge the customers in the territory added herein the rates and charges previously approved by this Commission. It is further

ORDERED that the docket shall be closed.

By ORDER of the Florida Public Service Commission this 2nd day of June, 2000.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

JKF

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.

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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.

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Attachment A

SUNSHINE UTILITIES OF CENTRAL FLORIDA, INC.

TERRITORY DESCRIPTION

WATER SERVICE AREA

MARION COUNTY

AREA TO BE DELETED

Part of Order No. 14978, issued 9/20/85 in Docket No. 840089-WU,

Oakhaven

Township 14 South, Range 21 East  
Section 36

The South 7 1/2 Chains of the South 1/2 of the NE 1/4 lying West of  
Alternate U.S. 441 (Old Dixie Highway)

Except - Commencing at the intersection of the Westerly ROW line of  
Alternate US 441 and the quarter section line running East and  
West, said Point being 1,112 feet West from the quarter section  
corner of the East Boundary of said Section 36; thence run  
Northwesterly 390 feet along the Westerly R-O-W line of U.S. 441  
(Alternate); thence West 104 feet; thence South 31°47'00" East a  
distance of 323 feet to the quarter section line; thence East along  
the quarter section line a distance of 123 feet to the Point of  
Beginning.

AREA TO BE ADDED

Oakhaven and Evans Acres

Township 14 South, Range 21 East, Section 25  
Township 14 South, Range 21 East, Section 36

The Southeast 1/4 of the Southwest 1/4 of Section 25 and the  
Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of Section  
36 and the East 1/3 of the Southeast 1/4 of the Northwest 1/4 of  
Section 36 and the West 1/2 of the Northeast 1/4 of Section 36 and  
Commencing at the Northeast corner of the Southeast 1/4 of Section  
36; thence South 89°10'00" West along the North boundary of said SE

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1/4 a distance of 2,014.05 feet; thence South  $00^{\circ}38'35''$  East 25.00 feet to a point on the Westerly ROW line of NW 20th Ave. (Gardner Ave 50.00 feet wide) and the Point of Beginning; thence South  $00^{\circ}38'35''$  East along said Westerly ROW line 152.96 feet to a point on the South Boundary of Lot 1 Block A of "Home Acres"; said point also being on the North Boundary of Lot 2, Block A of said "Home Acres"; thence South  $89^{\circ}09'01''$  West along said South boundary of lot 1 and along said North boundary of Lot 2, 611.86 feet to a point on the West boundary of said "Home Acres"; thence North  $00^{\circ}13'06''$  West along said West boundary 153.14 feet to a point on the South ROW line of NW 42 Street (Blowers Lane 50.00 feet wide) thence North  $89^{\circ}10'00''$  East along said South ROW line 610.73 feet to the Point of Beginning.