

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of Certificate No. 106-W to add and delete territory in Lake County by Florida Water Services Corporation.

DOCKET NO. 990054-WU
ORDER NO. PSC-02-1427-FOF-WU
ISSUED: October 18, 2002

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY

ORDER APPROVING AMENDED APPLICATION TO ADD AND
DELETE TERRITORY

BY THE COMMISSION:

BACKGROUND

Florida Water Services Corporation (FWSC or utility) is a Class A water and wastewater utility providing service in approximately 24 counties under our jurisdiction. FWSC provides water service to approximately 1,125 water customers in the Silver Lakes/Western Shores service area. Seventy-one of those customers are located outside the utility's current service area. Some of the water customers outside the service area have been served since 1994. Wastewater service is provided via septic tanks.

The utility's 2001 annual report shows a total annual operating revenue of \$93,628,152 and a net operating income of \$13,374,646. The Silver Lakes/Western Shores water system is in the St. Johns River Water Management District. The area is in Priority Water Resource Caution Area 1.

On January 15, 1999, FWSC filed an application for amendment of Certificate No. 106-W to add and delete territory in Lake County. On April 19, 1999, Crystal River Utilities, Inc. (Crystal River) filed an objection to FWSC's application and requested a formal hearing. On July 12, 2002, FWSC amended its application to include only the area for which there is a current need for service and to remove an area certificated to and served by Crystal River.

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Consequently, on July 23, 2002, Crystal River withdrew its objection to FWSC's application as amended.

We have jurisdiction pursuant to Section 367.045, Florida Statutes

NO SHOW CAUSE REQUIRED

Section 367.045, 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 Commission. In its application, FWSC acknowledges that it is serving customers outside its certificated territory, and by its application, the utility requests that the territory be included in its certificated service area. In a letter filed with the Commission on May 6, 1999, FWSC explains that it has been serving customers in the area since 1994 and that

it does not appear that service was being provided to this area with the intent of avoiding the Commission's filing and approval requirements, but rather, out of inadvertence on the part of the utility. Since 1994, an immense amount of Florida Water's time has been devoted to regulatory endeavors other than territory description corrections - specifically to rate and revenue matters.

Section 367.161, Florida Statutes, authorizes us to assess a penalty of not more than \$5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. Utilities are charged with the knowledge of our rules and statutes. 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).

Thus, any intentional act, such as a utility serving outside its certificated territory without our prior approval, would meet the standard for a "willful violation." In 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., Order

No. 24306, issued April 1, 1991, in Docket No. 890216-TL, 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Although FWSC is in apparent violation of Section 367.045(2), Florida Statutes, there appear to be circumstances which mitigate the utility's apparent violation. As stated above, the utility asserts that it was through inadvertence that it began serving the area. The utility states in its May 6 letter that it has since taken steps to ensure that instances of serving outside its certificated territory are minimized. For example, the utility has implemented an improved database which tracks developer projects and flags those projects located outside of its certificated territory. Furthermore, the utility states that it now undertakes a thorough examination of the legal descriptions of its territory whenever circumstances dictate or allow. We also note that FWSC has always paid the regulatory assessment fees associated with serving the territory.

We find that FWSC's apparent violation of Section 367.045(2), Florida Statutes, does not rise in these circumstances to the level which would warrant the initiation of a show cause proceeding. Thus, a show cause proceeding shall not be initiated.

THE APPLICATION

The application is in compliance with Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning applications for amendment of certificates, except as discussed above. The application contains a check in the amount of \$1,000 which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. FWSC provided evidence in the form of warranty deeds that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and territory descriptions have been provided in accordance with Rules 25-30.036(3)(e), (f) and (i), Florida Administrative Code. A

description of the territory to be added and deleted by the utility is appended hereto as Attachment A, which is incorporated herein by reference. As discussed above, the area to be added is already being served by FWSC. The area to be deleted is certificated to and served by Crystal River. Attachment B, which is incorporated herein by reference, is the complete territory description for Silver Lakes and Western Shores, including all of the previously approved territory and the proposed amendment. The utility has filed an affidavit consistent with Section 367.045(2)(d), Florida Statutes, stating that it has tariffs and annual reports on file with this Commission.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. As discussed above, Crystal River filed an objection to FWSC's application which was subsequently withdrawn when FWSC amended its application. In the notice withdrawing its objection, Crystal River stated that we should approve the application, as amended, without penalty for serving outside of the utility's certificated territory. The local planning agency was provided notice of the application, but it did not file a protest.

The Department of Community Affairs identified no growth management concerns with the proposed expansion of the utility. FWSC states that the proposed areas are contiguous to its existing territory, and based upon a review of the water sections of Lake County's local comprehensive plan, it believes that the provision of service to the area is consistent with the water section of the plan. The utility is currently serving the territory so this extension should not have any immediate impact on the monthly rates and charges.

According to the application, the existing water lines have ample capacity to deliver water to a pressure of 60-65 pounds per square inch at the extremities of the system under normal operating conditions. The water mains serving the territory range in size from 2-inches to 12-inches in diameter. There are numerous fire hydrants connected to the distribution system for fire protection. The interconnected Silver Lake Estates/Western Shores water system includes three water supply wells. These wells can deliver a maximum daily demand of 2,395,800 gallons per day (gpd). The high service pumps located at the Silver Lakes plant can deliver a peak

instantaneous demand of 4,420 gallons per minute. The highest maximum demand in the last 12 months was 1,833,000 gpd (5/25/02) for Silver Lakes Estates and 73,000 gpd for Western Shores (5/15/02). Therefore, it appears that the existing water system has sufficient capacity to handle the demands for the existing service territory and the proposed areas in the near future. Our staff contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation issued for the water system.

FWSC has been regulated by this Commission since 1964 and currently operates in 136 water and wastewater service territories throughout our jurisdiction. FWSC has engineers, scientists, accountants, and other professionals based in its Orlando headquarters, as well as licensed operators that operate and maintain facilities located throughout the state. At year-end 2001, FWSC's capital structure consisted of more than \$239 million in total capital, including more than \$120 million in long-term debt and more than \$114 million in equity capital. We find that FWSC has adequate technical and financial ability to render service to the proposed territory.

FWSC's approved rates for Silver Lakes/Western Shores were effective pursuant to a price index on November 26, 2001. The rates were last set by Order No. PSC-99-1794-FOF-WS, issued September 14, 1999, in Docket No. 950495-WS, in a settlement to a rate case. FWSC's approved service availability charges for Silver Lakes/Western Shores were effective pursuant to Order No. PSC-97-0374-FOF-WS, issued April 7, 1997, in Docket No. 950495-WS. FWSC shall continue to charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change in a subsequent proceeding. 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, FWSC's amended application to add and delete territory is hereby approved. No further action is required, and this docket shall be closed.

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Based on the foregoing, it is

ORDERED that Florida Water Services Corporation's amended application to add and delete territory is hereby approved. Certificate No. 106-W shall be amended to add and delete the territory set forth in Attachment A. It is further

ORDERED that Florida Water Services Corporation shall continue to charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change in a subsequent proceeding. It is further

ORDERED that Florida Water Services Corporation shall not be required to show cause for its apparent violation of Section 367.045(2), Florida Statutes. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 18th day of October, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

SMC

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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.

FLORIDA WATER SERVICES CORPORATION

TERRITORY DESCRIPTION

SILVER LAKES AND WESTERN SHORES WATER SERVICE AREA

LAKE COUNTY

AREA ADDED

Parcel 1

That portion of the West 1/2 of Section 1, Township 19 South, Range 25 East, lying South and West of Haines Creek.

Parcel 2

That portion of the Northeast 1/4 of Section 15, Township 19 South, Range 25 East, being more particularly described as follows:

Commence at the Southwest Corner of the Northeast 1/4 of the Southeast 1/4 of Section 15, Township 19 South, Range 25 East, thence proceed North 00°15'54" West along the West line of the Northeast 1/4 of the Southeast 1/4 of said Section, a distance of 1326.60 feet more or less to the Point of Beginning; thence proceed South 88°20'47" West, a distance of 136.37 feet; thence proceed North 02°58'24" East, a distance of 147.72 feet; thence proceed North 03°13'17" West, a distance of 146.80 feet; thence proceed North 84°05'13" East, a distance of 431.95 feet; thence proceed South 01°37'20" West, a distance of 166.95 feet; thence proceed North 89°53'46" East, a distance of 100.99 feet; thence proceed South 00°06'14" East, a distance of 196.80 feet to a point on the existing service boundary which is also the South line of the Northeast 1/4 of said Section; thence proceed South 89°49'16" West along said boundary a distance of 390.23 feet, returning to the Point of Beginning.

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AREA DELETED

Parcel 3

That portion of the Northwest 1/4 of Section 12, Township 19 South, Range 25 East, being more particularly described as follows:

Commence at the Northwest Corner of said Section, thence proceed South 00°44'20" West a distance of 1332.18 feet to the Point of Beginning; thence proceed South 89°30'48" East, a distance of 241.60 feet; thence meander along Haines Creek 538 feet more or less; thence proceed South 00°00'00" West, a distance of 490.91 feet; thence proceed North 87°10'57" West, a distance of 649.57 feet; thence proceed North 00°43'58" East, a distance of 546.00 feet, returning to the Point of Beginning.

FLORIDA WATER SERVICES CORPORATION

COMPLETE TERRITORY DESCRIPTION

SILVER LAKES AND WESTERN SHORES WATER SERVICE AREA

LAKE COUNTY

SILVER LAKE ESTATES

Township 19 South, Range 25 East, Lake County, Florida.

Section 10

The Southeast 1/4 of the Southeast 1/4 of said Section 10.

The East 400 feet of the Southwest 1/4 of the Southeast 1/4 of said Section 10.

The West 400 feet of the South 800 feet of the Northeast 1/4 of the Southeast 1/4.

The East 400 feet of the South 800 feet of the Northwest 1/4 of the Southeast 1/4.

Section 11

The South 1/2 of the Northeast 1/4.

The North 1/2 of the Southeast 1/4.

The East 1/2 of the Southwest 1/4.

The Southwest 1/4 of the Southwest 1/4.

The West 350 feet of the Southwest 1/4 of the Southeast 1/4.

Section 14

The West 1/2 of the Northwest 1/4.

The Northwest 1/4 of the Southwest 1/4.

Section 15

The North 700 feet of the East 2,000 feet of the Northeast 1/4.

The Northeast 1/4 of the Southeast 1/4.

The North 350 feet of the East 700 feet of the Southeast 1/4 of the Southeast 1/4.

That portion of the Northeast 1/4 of Section 15, Township 19 South, Range 25 East, being more particularly described as follows:

Commence at the Southwest Corner of the Northeast 1/4 of the Southeast 1/4 of Section 15, Township 19 South, Range 25 East, thence proceed North 00°15'54" West along the West line of the Northeast 1/4 of the Southeast 1/4 of said Section, a distance of 1326.60 feet more or less to the Point of Beginning; thence proceed South 88°20'47" West, a distance of 136.37 feet; thence proceed North 02°58'24" East, a distance of 147.72 feet; thence proceed North 03°13'17" West, a distance of 146.80 feet; thence proceed North 84°05'13" East, a distance of 431.95 feet; thence proceed South 01°37'20" West, a distance of 166.95 feet; thence proceed North 89°53'46" East, a distance of 100.99 feet; thence proceed South 00°06'14" East, a distance of 196.80 feet to a point on the existing service boundary which is also the South line of the Northeast 1/4 of said Section; thence proceed South 89°49'16" West along said boundary a distance of 390.23 feet, returning to the Point of Beginning.

WESTERN SHORES

Township 19 South, Range 25 East, Lake County, Florida.

Section 1

That portion of the West 1/2 of Section 1, Township 19 South, Range 25 East, lying South and West of Haines Creek.

Section 12

That portion of the South 1/2 of the North 1/2 that is located Southerly of Haines Creek.

The North 1/2 of the South 1/2.

The North 200 feet of the South 1/2 of the South 1/2.

Less and except:

That portion of the Northwest 1/4 of Section 12, Township 19 South, Range 25 East, being more particularly described as follows:

Commence at the Northwest Corner of said Section, thence proceed South 00°44'20" West a distance of 1332.18 feet to the Point of Beginning; thence proceed South 89°30'48" East, a distance of 241.60 feet; thence meander along Haines Creek 538 feet more or less; thence proceed South 00°00'00" West, a distance of 490.91 feet; thence proceed North 87°10'57" West, a distance of 649.57 feet; thence proceed North 00°43'58" East, a distance of 546.00 feet, returning to the Point of Beginning.

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Township 19 South, Range 26 East, Lake County, Florida.

Section 7

That portion of the Southwest 1/4 of that is lying Westerly of the shoreline of Lake Eustis.

Section 18

That portion of the North 1/2 of said Section 18 that is lying Westerly of the shoreline of Lake Eustis.