

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment
of Certificate Nos. 294-S and
338-W to extend water and
wastewater service area in
Brevard County by Burkim
Enterprises, Inc.

DOCKET NO. 020553-WS
ORDER NO. PSC-02-1712-FOF-WS
ISSUED: December 9, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER APPROVING AMENDMENT OF CERTIFICATES
NOS. 294-S AND 338-W TO INCLUDE ADDITIONAL
TERRITORY, AND CLOSING DOCKET

BY THE COMMISSION:

Background

On June 21, 2002, Burkim Enterprises, Inc. (Burkim or utility)
filed an application for amendment of Certificates Nos. 338-W and
294-S to include additional territory in Brevard County. The
utility's water system is located in a water use caution area in
the St. Johns River Water Management District.

Burkim is a Class C utility providing water and wastewater
service to three general service customers and about 423
residential customers in Snug Harbor Village and Snug Harbor Lakes
Condominium in Brevard County. The utility is serving about 334
customers that are outside of its existing service area in the Snug
Harbor Lakes Condominium area. Some of the customers outside of
the service area have been served since 1988.

DOCUMENT NUMBER-DATE

13387 DEC-98

FPSC-COMMISSION CLERK

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We have jurisdiction in this matter pursuant to Section 367.045, Florida Statutes.

Show Cause

As discussed earlier, Burkim is serving about 334 customers outside of its service area which is an apparent violation of Section 367.045, Florida Statutes. Pursuant to Section 367.045, Florida Statutes, a utility may not extend its service outside the area described in its certificate of authorization until it has obtained an amended certification from this Commission.

We became aware that Burkim is serving outside of its service area during a staff-assisted rate case (Docket No. 020396-WS). Upon further investigation, it was determined that the territory currently being served was transferred to Burkim from CGD Utilities by Order No. PSC-002-1628-FOF-WS, issued August 8, 2001, in Docket No. 001501-WS. Burkim continued to serve the area served by the previous owner believing that all of the territory was within its service area. On May 1, 2002, Burkim was informed that it appeared the utility was serving outside the territory it is authorized to serve. On June 21, 2002, Burkim filed an application for amendment of its service area to include the additional territory.

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).

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., 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."

We do not find 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. According to the information provided, Burkim continued serving the territory served by the previous owner. In addition, Burkim has included the customers in the additional territory in its annual reports and paid all the related regulatory assessment fees during the time the area has been served. Further, shortly after being told that it was serving customers outside of its territory, Burkim filed for an amendment of its service area. Therefore, we do not find it appropriate to order Burkim to show cause for failing to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

Application

Except as previously discussed, 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 \$1000, as required by Rule 25-30.020, Florida Administrative Code. The application also includes evidence in the form of a warranty deed that the utility owns the land upon which its facilities are located, pursuant to Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and territory descriptions have been provide, as prescribed by Rule 25-30.036 (3)(e), (f), and (i), Florida Administrative Code. The description of the territory being added is shown on Attachment A of this Order.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. On July 11, 2002, we received a letter from Ms. Nancy Higgs, Brevard County Commission, District 3, in which she proposed that we delay the request for extension until Burkim

is in compliance with the provisions of Order No. PSC-01-2511-PAA-WS. By letter dated September 25, 2002, Ms. Higgs was informed that a staff engineer visited the Snug Harbor service area on August 21, 2002. At that time the engineer inspected the utility and verified that all water and wastewater treatment plant improvements required by Order No. PSC-01-2511-PAA-WS had been completed.

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 not identified any growth management concerns with the proposed expansion. Further, the utility states in the application that to the best of its knowledge the provision of water and wastewater service to this property by Burkim is consistent with the Brevard County Comprehensive Plan.

According to the application, the water and wastewater lines have already been constructed. The property which is not currently being served will connect to Burkim's existing water and wastewater system so that no line extension will be needed by the utility. The utility's existing water treatment system consists of two 6-inch wells, a filter system, one 65,000 gallon ground storage tank, a chlorination/ammoniation system, three high service pumps and a hydro pneumatic tank. The average daily water use is about 65,000 gallons per day (gpd). The highest maximum demand in the last 12 months was 112,000 gpd. According to the information provided in the rate case, the firm reliable capacity of the water system was determined to be 356,447 gpd. The high service pumps can deliver a peak instantaneous demand of 1,200 gallons per minute. The wastewater treatment system consists of a 100,000 gpd contact stabilization plant and perk/evaporation ponds and chlorination for disinfection. The utility treats on average about 42,000 gpd and has a maximum flow of 90,840 gpd.

The Department of Environmental Protection (DEP) has been contacted regarding the Burkim system. According to DEP there are no outstanding notice of violation against the utility. Further, according to DEP, the utility's existing water and wastewater systems have sufficient capacity to handle the demands of the existing service area and the proposed service areas in the near future.

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With respect to technical ability, Burkim has a contract licensed operator, a bookkeeper, and engineers to operate the utility. Further, to demonstrate its financial ability, the utility provided a copy of their profit and loss statement, which shows that it has total revenues of \$124,942 and a net income of \$11,327, for the period from January 1, 2002, to August 12, 2002. The utility's balance sheet shows total assets of \$409,866, total long-term debt of \$360,221, and total equity capital of \$49,645. Therefore, it appears that Burkim has the financial ability to continue to operate the utility and provide satisfactory service to the additional territory.

Burkim's current rates and charges were set by Order No. PSC-01-2511-PAA-WS, issued December 24, 2001, in Docket No. 010396-WS. Burkim shall continue to charge the rates and charges approved in its tariff until authorized to change by this Commission in subsequent proceeding.

Based on the foregoing, we find that Burkim's request to amend its service area to include the additional territory is in the public interest and it is approved. Burkim has filed revised tariff sheets reflecting the additional territory and returned its Certificates for entry reflecting the additional territory. A description of the additional territory is shown on Attachment A of this Order, which by reference is incorporated herein.

It is, therefore,

ORDERED by the Florida Public Service Commission that Certificates Nos. 294-S and 338-W, held by Burkim Enterprises, Inc., 2340 Northeast Dixie Highway, Jensen Beach, Florida 34957, are hereby amended to include the territory shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that Burkim Enterprises, Inc. shall continue to charge 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 is hereby closed.

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By ORDER of the Florida Public Service Commission this 9th day
of December, 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)

ALC

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

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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.

BURKIM ENTERPRISES, INC.

TERRITORY DESCRIPTION
SNUG HARBOR CONDOMINIUM AREA AND VICINITY
BREVARD COUNTY

Sewer Treatment Plant

All that part of the South 1/3 of the Northeast 1/4 of the Northeast 1/4 of Section 10, Township 30 South, Range 38 East, Brevard County, Florida. Lying West of the Florida East Coast Railway right of way and lying East of a line 592 feet Westerly of the West right of way line of said Florida East Coast Railway as measured at right angles of said right of way line.

Water Treatment Site

A portion of Sections 10 and 11, Township 30 South, Range 38 East, being more particularly described as follows: Commence at the Southeast corner of the Northeast one quarter of said Section 10. Thence North 00°03'59" West a distance of 246.18 feet to the Point of Beginning; thence continue North 00°03'59" West a distance of 30.13 feet to a point of curvature of a circular curve concave to the West having a radius of 261.27 feet and a central angle of 23°48'02"; thence northwesterly along the arc of said curve an arc distance of 108.53 feet to a point of tangency; thence North 23°52'01" West a distance of 116.81 feet; thence North 66°07'59" East a distance of 91.74 feet to a point on the westerly right of way line of Florida East Coast Railway; thence South 23°52'01" East along said Westerly right of way line a distance of 305.78 feet; thence North 89°56'12" West a distance of 137.98 feet to the Point of Beginning.

Parcel A:

A portion of the Northeast 1/4 of the Northeast 1/4 of Section 10, Township 30 South, Range 38 East, Brevard County, Florida, lying westerly of a 100.00 foot wide Florida Power and Light Company Easement as described in Deed Book 166, Page 52, Public Records of Brevard County, Florida, and being more particularly described as follows:

From a concrete monument marking the Southwest corner of said Northeast 1/4, of the Northeast 1/4 Section 10 said point being the Point of Beginning of this description; thence run North 00°35'41" East along the West line of said Northeast 1/4 a distance of 438.83 feet; thence run North 89°42'50" East a distance of 48.01 feet to the westerly right of way line of said Florida Power and Light Company Easement; thence run South 25°15'52" East along said right of way line a distance of 484.10 feet; thence run South 89°42'50" West a distance of 260.07 feet to the Point of Beginning.

Together with:

A parcel of land lying in the South 1/3 of the Northeast 1/4 of the Northeast 1/4 of Section 10, Township 30 South, Range 38 East, Brevard County, Florida,

Being more particularly described as follows:

Commence at the Southwest corner of said Northeast 1/4 of the Northeast 1/4 of Section 10, thence North 00°35'41" West along the West line of the said Northeast 1/4 of the Northeast 1/4 of Section 10 a distance of 438.83 feet to the Point of Beginning of the herein described parcel; thence continue North 00°35'41" West along the said West line of the Northeast 1/4 of the Northeast 1/4 of Section 10 a distance of 4.01 feet to the North line of the said South 1/3 of the Northeast 1/4 of the Northeast 1/4 of Section 10; thence North 89°45'28" East along the said North line of the South 1/3 of the Northeast 1/4 of the Northeast 1/4 of Section 10, a distance of 180.41 feet the intersection with a line 615.50 feet West of by perpendicular measurement and parallel with the west right of way line of Florida East Coast Railway; thence South 23°53'02" East along the said line 615.50 feet West of by perpendicular measurement and parallel with the West right of way line of the Florida East Coast Railway, a distance of 483.09 feet to the South line of the said Northeast 1/4 of the Northeast 1/4 of Section 10; thence South 89°42'50" West along the said South line of the Northeast 1/4 of the Northeast 1/4 of Section 10, a distance of 121.34 feet; thence North 25°15'52" West a distance of 484.10 feet; thence South 89°42'50" West a distance of 48.01 feet to the Point of Beginning.

Together with:

A parcel of land lying in the Northwest 1/4 of the Northeast 1/4 of Section 10, Township 30 South, Range 38 East, Brevard County, Florida, and being more particularly described as follows:

Commence at the Northeast corner of the Northwest 1/4 of the Northeast 1/4 of Section 10, Township 30 South, Range 38 East, thence South 00°35'41" East along the East line of the Northwest 1/4 of the Northeast 1/4 of Section 10 for a distance of 66.00 feet to the Point of Beginning of the herein described parcel of land; thence continue South 00°35'41" East along said East line a distance of 1262.51 feet to the South line of the Northwest 1/4 of the Northeast 1/4 of Section 10; thence run South 89°42'50" West along said South line a distance of 308.99 feet; thence departing said South line run North 00°35'41" West a distance of 1263.23 feet; thence North 89°50'45" East a distance of 309.00 feet to the Point of Beginning.

Together with:

A 66 foot strip of land more particularly described as follows: Beginning at the Northeast corner of the Northwest 1/4 of the Northeast 1/4, Section 10, Township 30 South, Range 38 East; thence West along the North line of the Northeast 1/4 a distance of 375 feet; thence South and parallel to the East line of said Northeast 1/4 a distance of 1350 feet more or less to a point on the North line of the South 1/2 of the West 1/2 of the Northeast 1/4 of said Section 10, Township 30 South, Range 38 East; thence East along said North line of the South 1/2 of the West 1/2 of the Northeast 1/4 66 feet to a Point; thence North and parallel to the East line of the Northeast 1/4 a distance of 1284 feet to a point; thence East and parallel to the North line of the Northeast 1/4 a distance of 309 feet to a point on the East line of the West 1/2 of the Northeast 1/4, thence North 00°35'41" West 66 feet to the Point of Beginning.

Snug Harbor Condominium Area

A parcel of land lying in Section 10 and 11, Township 30 South, Range 38 East, Brevard County, Florida, being more particularly described as follows: Begin at the Southeast corner of the Northeast 1/4 of said Section 10; thence run South 89°35'00" West a distance of 2684.0 feet to the Southwest corner of said Northeast 1/4 ; thence run North 00°38'31" West a distance of 1331.75 feet to the North line of the South 1/2 of said Northeast 1/4; thence run North 89°18'28" East a distance of 2352.44 feet, along said North line to the West right of way line of the Florida East Coast

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Railway; thence run along said right of way line South 23°52'01" East a distance of 891.11 feet; thence run South 66°07'59" West a distance of 91.74 feet; thence run South 23°52'01" East a distance of 116.81 feet to the beginning of a curve concave to the Southwest, said curve having a radius of 261.27 feet and a central angle of 23°48'02"; thence run Southeasterly along said curve, an arc distance of 108.53 feet; thence run South 00°03'59" East a distance of 276.31 feet to the Point of Beginning.