

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for deletions and amendments to portions of service territory in Seminole County by CWS Communities LP d/b/a Palm Valley Utilities, holder of Certificates 277-W and 223-S.

DOCKET NO. 041418-WS
ORDER NO. PSC-05-0425-FOF-WS
ISSUED: April 20, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

ORDER AMENDING WATER AND WASTEWATER CERTIFICATES

BY THE COMMISSION:

Background

On December 21, 2004, CWS Communities LP d/b/a Palm Valley Utilities (Palm Valley or utility) filed an application with this Commission to amend Certificates 277-W and 223-S to extend and delete portions of its service territory in Seminole County, pursuant to Section 367.045, Florida Statutes. Palm Valley is a Class C utility with total company annual operating revenues of \$107,796, and a net loss of \$246,968. The utility currently serves 724 water and wastewater customers in two residential areas known as Palm Valley mobile home community and Fox Run Subdivision. The proposed area is located in the St. Johns River Water Management District (SJRWMD). Water use restrictions have been imposed district wide to encourage conservation.

According to its application, the utility indicated that the filing was a result of having been contacted by a developer requesting water and wastewater service for a proposed 80-unit subdivision to be located within the utility's existing service territory. However, due to the lack of wastewater and water plant capacity, the utility is unable to provide service as requested. As a result, a partial deletion of territory is necessary in order to allow Seminole County Utilities to provide the requested service to the proposed development. Also, during preparation of the legal description for this case, it became apparent to the utility that there was additional undeveloped property which it does not intend to serve and which should also be deleted from the service territory. Moreover, the utility became aware of certain parcels of property that it has been serving for approximately 25-30 years that were not part of its approved certificated territory. The utility is requesting that these parcels, which currently have 103 water and wastewater customers, be included in the approved certificated territory.

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FPSC-COMMISSION CLERK

This Order addresses the utility's application and whether the utility should be made to show cause as to why it should not be fined for serving outside its certificated territory in apparent violation of Section 367.045(2), Florida Statutes. We have jurisdiction pursuant to Section 367.045, Florida Statutes.

Show Cause

When Palm Valley was approached by a developer for the provision of service, Palm Valley discovered that it had been serving outside its certificated territory for many years in apparent violation of Section 367.045(2), Florida Statutes. Section 367.045(2), Florida Statutes, 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.

Upon discovering that it had been serving outside its territory in three separate areas for some 25-30 years, Palm Valley filed this application to add that territory, and delete territory in its service territory for which it no longer has the capacity to serve.

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, or any lawful order of the Commission. By failing to comply with the provisions of Section 367.045(2), Florida Statutes, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. In Commission 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., this 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.

Although Palm Valley's failure to obtain our approval prior to serving outside of its certificated service area is an apparent violation of Section 367.045(2), Florida Statutes, there are circumstances which mitigate the utility's apparent violation. The utility's service area has been pieced together by a series of orders whose legal descriptions are quite complicated and confusing. For the three parcels in question, which are adjacent and interwoven into Palm Valley's territory, Palm Valley states that it thought this territory had already been added and that it has been providing service to these areas for approximately 25 to 30 years. At the time such service was provided, it appears that the utility was the logical service provider, and that no other utility was either interested or in a position to provide the service.

Believing that these customers were located within its service area, Palm Valley has paid all the necessary regulatory assessment fees for the additional territory. Furthermore, upon

becoming aware that the customers were not located within its certificated territory, Palm Valley filed an application for amendment of its certificate to include the additional territory.

We find that the apparent violation of Section 367.045(2), Florida Statutes, does not rise in these circumstances to the level which warrants the initiation of a show cause proceeding. Also, any such violation appears to have occurred over 25 years ago. Therefore, we find that no show cause proceeding shall be initiated against Palm Valley for its apparent violation of Section 367.045(2), Florida Statutes.

Amendment of Certificates 277-W and 223-S

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 proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections were received and the time for filing objections has expired.

Pursuant to Rule 25-30.036, Florida Administrative Code, the utility provided verification of its need to include the areas previously assumed to have already been part of the utility's territory. Also, the utility has provided adequate reasons for deletion of territory and why it is in the public interest to do so. As referenced in the case background, the utility has determined that it is unable to provide requested service due to the lack of wastewater and water plant capacity. During preparation of the legal description for this case, it became apparent to the utility that there was undeveloped property which it does not intend to serve and which should also be deleted from the service territory. In addition, the utility became aware of certain parcels of property that it has been serving for approximately 25-30 years that were not part of its approved certificated territory.

The utility has demonstrated its ability to serve the proposed extended areas, and that it has the necessary financial and technical expertise to do so. The utility operates a 0.900 MGD maximum-day water treatment facility and a 0.150 MGD permitted capacity extended aeration wastewater treatment facility. It points out in its application that its facilities are capable of providing water and wastewater service to the existing developed area. The Department of Environmental Protection has no outstanding violations, citations, or notices of violation issued to the utility for the water and wastewater systems that serve the area. According to the Department of Community Affairs, there are no objections to the proposed expansions and deletions of potable water services to the affected parcels.

Based on the above information, we find it is in the public interest to approve the application filed by Palm Valley to amend its territory to reflect the area described in Attachment A. The utility shall charge the customers in the territory added herein the rates and charges contained in its current tariff until authorized to change by this Commission.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of CWS Communities LP, d/b/a Palm Valley Utilities to amend Certificates 277-W and 223-S is approved, and those certificates are amended to include the territory described in Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that CWS Communities LP, d/b/a Palm Valley Utilities shall charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. It is further

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

ORDERED that no show cause proceeding shall be implemented for CWS Communities LP, d/b/a Palm Valley Utilities apparently having served outside its certificated territory. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 20th day of April, 2005.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

RRJ

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.

CWS COMMUNITIES LP d/b/a PALM VALLEY UTILITIES
WATER AND WASTEWATER SERVICE AREA
DESCRIPTION OF TERRITORY SERVED IN SEMINOLE COUNTY

COMMENCE AT THE SOUTH 1/4 CORNER OF SECTION 34, TOWNSHIP 21 SOUTH, RANGE 31 EAST, SEMINOLE COUNTY, FLORIDA; THENCE RUN N.00°02'08"E. A DISTANCE OF 40 FEET TO THE SOUTHWEST CORNER OF LOT 26, ORLANDO INDUSTRIAL PARK, AS RECORDED IN PLAT BOOK 10, PAGE 100, OF THE PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA; THENCE CONTINUE N.00°02'08"E. ALONG THE WEST LINE OF SAID LOT 26 A DISTANCE OF 900 FEET TO THE SOUTHWEST CORNER OF LOT 25, SAID ORLANDO INDUSTRIAL PARK FOR A POINT OF BEGINNING (POINT OF BEGINNING 1); THENCE N.00°02'08"E. ALONG THE WEST LINE OF SAID LOT 25 A DISTANCE OF 381.29 FEET TO THE SOUTHEAST CORNER OF LOT 23 OF SAID ORLANDO INDUSTRIAL PARK; THENCE RUN N.89°24'17"W. A DISTANCE OF 1275.42 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF ALAFAYA TRAIL, (S.R. 434); THENCE RUN N.00°05'57"E. ALONG THE EAST LINE OF SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 95.00 FEET; THENCE DEPARTING SAID EASTERLY RIGHT OF WAY LINE RUN S.89°06'21"E. A DISTANCE OF 1150.29 FEET TO A POINT ON THE WESTERLY LINE OF THE EASTERLY 125.00 FEET OF LOT 23 OF SAID ORLANDO INDUSTRIAL PARK; THENCE N.00°03'18"W. ALONG SAID WESTERLY LINE A DISTANCE OF 783.87 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF PARK ROAD, THENCE RUN N.63°50'57"E. ALONG SAID RIGHT-OF-WAY LINE OF PARK ROAD A DISTANCE OF 1217.12 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 2639.40 FEET, AND A CENTRAL ANGLE OF 19°43'47", THENCE RUN ALONG THE ARC OF SAID CURVE A DISTANCE OF 908.88 FEET, THENCE DEPARTING SAID RIGHT-OF-WAY RUN N.06°22'24"W. A DISTANCE OF 70.00 FEET TO A POINT ON THE SOUTH LINE OF LOT 6, AFORESAID ORLANDO INDUSTRIAL PARK, THENCE N.00°02'08"E. ALONG SAID EAST LINE OF THE WEST 260.33 FEET OF SAID LOT 6, A DISTANCE OF 899 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 6, THENCE RUN S.89°13'35"E. ALONG THE NORTH LINE OF SAID LOT 6 AND LOT 5 A DISTANCE OF 802 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 21 SOUTH, RANGE 31 EAST; THENCE N.00°14'21"W. ALONG THE EAST LINE OF SAID SECTION 34 ALSO BEING THE WEST LINE OF SECTION 35, TOWNSHIP 21 SOUTH, RANGE 31 EAST, A DISTANCE OF 1311.10 FEET TO THE NORTHWEST CORNER OF SAID SECTION 35; THENCE RUN EAST ALONG THE NORTH LINE OF SAID SECTION 35 A DISTANCE OF 1325 FEET TO THE NORTHEAST CORNER OF THE EAST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 35, THENCE RUN SOUTH A DISTANCE OF 1320 FEET TO THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 35, SAID POINT ALSO BEING A POINT ON THE NORTH LINE OF BRIGHTON PARK AT CARILLON, AS RECORDED IN PLAT BOOK 42, PAGES 86-89, OF THE

PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA, THENCE RUN N.89°42'41"E. ALONG SAID NORTH LINE A DISTANCE OF 285 FEET TO A POINT ON THE APPROXIMATE CENTERLINE OF A CREEK, THENCE RUN S.09°24'12"E. 273.21 FEET AND S.06°51'54"W. 398.91 FEET ALONG SAID CENTERLINE TO A POINT OF THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF AFORESAID SECTION 35; THENCE S.89°41'09"W. ALONG SAID NORTH LINE A DISTANCE OF 279.00 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 35, THENCE RUN S. 00°53'56"E. ALONG THE EAST LINE OF THE SOUTH 1/2 OF THE EAST 3/4 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 35 A DISTANCE OF 665.72 FEET TO A POINT ON THE NORTH LINE OF TRACT 107 AT CARILLON, AS RECORDED IN PLAT BOOK 47, PAGE 97 IN THE PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA, THENCE RUN S.89°39'39"W. A DISTANCE OF 677.06 FEET TO THE NORTHEAST CORNER OF THE EAST 1/2, OF THE WEST 1/2, OF THE NORTHWEST 1/4, OF THE SOUTHWEST 1/4, OF SAID SECTION 35, THENCE RUN S.00°49'19"E. ALONG THE WEST LINE OF AFORESAID TRACT 107 AT CARILLON A DISTANCE OF 1304.76 FEET, THENCE RUN N.89°49'27"W. A DISTANCE OF 334.74 FEET TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 35, THENCE RUN N.00°30'22"W. ALONG SAID WEST LINE A DISTANCE OF 224.56 FEET TO THE SOUTHEAST CORNER OF LOT 3 ORLANDO INDUSTRIAL PARK UNIT 2, AS RECORDED IN PLAT BOOK 11, PAGE 43 IN THE PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA; THENCE RUN N. 89°37"W. ALONG SOUTH LINE OF SAID LOT 3 AND LOT 8, ORLANDO INDUSTRIAL PARK, AS RECORDED IN PLAT BOOK 10, PAGE 100, IN THE PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA A DISTANCE OF 1003.37 FEET, THENCE RUN S. 00°29'25" E. A DISTANCE OF 218.30 FEET, THENCE S.01°39'41"E. A DISTANCE OF 482.32 FEET, THENCE RUN N.89°36'50"W. A DISTANCE OF 129.69 FEET TO THE NORTHEAST CORNER OF LOT 11 OF AFORESAID ORLANDO INDUSTRIAL PARK, THENCE RUN S.74°26"W. ALONG THE NORTH LINE OF SAID LOT 11 A DISTANCE OF 364.01 FEET TO THE NORTHEAST CORNER OF LOT 12 OF SAID ORLANDO INDUSTRIAL PARK, THENCE RUN N. 89°37"W. 760 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SEMINOLE AVENUE; THENCE N.00°02'08"E. ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 387.76 FEET; THENCE S.89°37'00"E. 225.00 FEET; THENCE N.00°02'08"E. A DISTANCE OF 18.88 FEET; THENCE S.89°37'00"E. 283.00 FEET; THENCE N.00°02'08"E. 208.00 FEET; THENCE N.89°37'00"W. 508.00 FEET TO AFORESAID EAST RIGHT OF WAY LINE OF SEMINOLE AVENUE; THENCE N.00°02'08"E. A DISTANCE OF 185.36 FEET; THENCE N.89°39'29"W. A DISTANCE OF 70.00 FEET; TO THE WEST RIGHT OF WAY LINE OF SAID SEMINOLE AVENUE; THENCE S.00°02'08"W. ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 599.68 FEET TO THE SOUTHEAST CORNER OF LOT 25, AFORESAID ORLANDO INDUSTRIAL PARK; THENCE N.89°37"W. ALONG THE SOUTH LINE OF LOT 25 A DISTANCE OF 670 FEET TO THE POINT OF BEGINNING.

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ALSO;

COMMENCE AT THE SOUTH 1/4 CORNER OF SECTION 34, TOWNSHIP 21 SOUTH, RANGE 31 EAST, SEMINOLE COUNTY, FLORIDA; THENCE RUN N.00°02'08"E. A DISTANCE OF 40 FEET TO THE SOUTHWEST CORNER OF LOT 26, ORLANDO INDUSTRIAL PARK, AS RECORDED IN PLAT BOOK 10, PAGE 100, OF THE PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA; THENCE CONTINUE N.00°02'08"E. A DISTANCE OF 2295.65 FEET TO THE SOUTHWEST CORNER OF LOT 1, FOX RUN AS RECORDED IN PLAT BOOK 18, PAGE 60 IN THE PUBLIC RECORDS OF SEMINOLE COUNTY, FLORIDA, FOR A POINT OF BEGINNING (POINT OF BEGINNING 2); THENCE RUN N.00°02'08"E. ALONG THE WEST LINE OF SAID FOX RUN A DISTANCE OF 945.21 FEET TO THE NORTHWEST CORNER OF SAID FOX RUN; THENCE N.63°49'53"E. ALONG THE NORTH LINE OF FOX RUN A DISTANCE OF 935.90 FEET TO THE NORTHEAST CORNER OF SAID FOX RUN; THENCE S.00°02'08"W. ALONG THE EAST LINE OF FOX RUN A DISTANCE OF 945.61 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF PARK ROAD; THENCE S.63°50'57"W. ALONG SAID NORTH RIGHT OF WAY LINE A DISTANCE OF 935.83 FEET TO THE POINT OF BEGINNING.