

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for quick-take amendment and application for amendment of Certificate Nos. 209-W and 154-S to extend water and wastewater services to certain territory (Jasmine Lakes) in Pasco County, by Aqua Utilities Florida, Inc.

DOCKET NO. 080534-WS
ORDER NO. PSC-09-0250-FOF-WS
ISSUED: April 27, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER ACKNOWLEDGING QUICK TAKE AMENDMENT OF CERTIFICATE NOS. 209-W AND 154-S IN PASCO COUNTY BY AQUA UTILITIES FLORIDA, INC. AND DECLINING TO INITIATE A SHOW CAUSE PROCEEDING

Background

Aqua Utilities Florida, Inc. (AUF or Utility) is a Class A water and wastewater utility with 82 water and wastewater systems located in sixteen counties throughout Florida. This system was originally granted a certificate in 1972,¹ and was transferred to AUF in Docket No. 040951-WS. The Utility's service area in Pasco County is in the Southwest Florida Water Management District.

On August 12, 2008, the Utility filed both its initial application and completed its follow-up application for a "Quick take" amendment to Certificate Nos. 209-W and 154-S for certain territory at its Jasmine Lakes systems in Pasco County, pursuant to Rule 25-30.036(2), Florida Administrative Code (F.A.C.). The Utility provides water service to approximately 1500 customers at this system, and, during its 2006 rate case (Docket No. 060368-WS), it was discovered that the Utility was serving two customers outside its service territory. Service to these two customers occurred sometime between January 2002 and May 2003. The Utility has indicated that a petition for certificate amendments to serve these customers was inadvertently overlooked.

On September 12, 2008, Pasco County objected to AUF's application. AUF responded to Pasco County on September 19, 2008, and filed a corrected legal description with us. On

¹ In Docket Nos. 72656-W and 72657-S, In re: Application of Jasmine Lakes Services, Inc., for a certificate to operate its existing water and sewer system in Pasco County.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

October 10, 2008, Pasco County withdrew its objection. We have jurisdiction pursuant to Section 367.045, Florida Statutes (F.S.).

Declining to Initiate Show Cause

As stated in the case background, AUF is serving two customers outside of its certificated territory. Section 367.045(2), F.S., states in pertinent part: "A utility may not delete or 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 . . ." If a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, F.S., Section 367.161(2), F.S., authorizes us to assess a penalty of not more than \$5,000 for each offense. By serving customers outside of its certificated territory without obtaining an amended certificate of authorization, the Utility's act was "willful" within the meaning of Section 367.161, F.S. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, 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., we, 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," see also Order No. PSC-99-2390-FOF-WU, issued on December 7, 1999, in Docket No. 980543-WU, In Re: Application for amendment of Certificate No. 363-W to add territory in Marion County by Sunshine Utilities of Central Florida, Inc. (finding that the utility's apparent violation of Section 367.045, F.S., did not warrant the initiation of a show cause proceeding).

Although AUF's failure to obtain an amended certificate of authorization for its Jasmine Lakes system in Pasco County from us prior to serving outside of its certificated area is an apparent violation of Section 367.045(2), F.S., according to its application, AUF erroneously believed that the territory in question was included in its service area. As a result of our review in Docket No. 060368-WS, several service areas were found to have customers outside our approved service area. When the error was discovered, AUF began preparing the instant application to correct the mistake and include the territory to its service area. AUF has indicated that throughout this time period, the calculation of the annual regulatory assessment fees (RAFs) for AUF was inclusive of all these customers.

We do not believe that the apparent violation of Section 367.045, F.S., rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, we decline to initiate a show cause proceeding for AUF's failure to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

Acknowledging Quick Take Amendment

The "Quick Take" amendment is designed to provide water and/or wastewater service quickly for areas that serve less than 25 equivalent residential connections (ERCs). The request for service territory expansion and amendment of existing certificates is considered approved when the utility complies with Rule 25-30.036(2), F.A.C., and if no protest is timely filed to the notice of application.

On August 12, 2008, AUF filed both its initial application and completed follow-up application for a "Quick Take" amendment to Certificate Nos. 209-W and 154-S for new territory in Pasco County, pursuant to Rule 25-30.036(2), F.A.C. The proposed territory, while now serving two customers, will include six ERCs. The applicant began providing service to the current two customers between January 2002 and May 2003. The application is in compliance with the governing statute, Section 367.045, F.S., and other pertinent statutes and administrative rules concerning an application for amendment of certificate.

One objection to the application was filed and subsequently withdrawn. No further objections have been received and the time for filing such has expired. AUF has filed revised tariff sheets incorporating the additional territory into its tariff, which will require some changes. From AUF's recent rate case in Docket No. 080121-WS, we became aware of an outstanding warning letter from the Department of Environmental Protection involving the wastewater ponds. While this issue is being resolved, it appears that AUF has sufficient capacity to serve the existing and proposed customers.

Based on the above information, we find that it is in the public interest to acknowledge the "Quick Take" amendment application filed by AUF to amend its territory to reflect the area described in Attachment A. Also, the existing charges contained in its tariff shall be applied to the customers in the new service territory until AUF is authorized by us to change them in a subsequent proceeding. AUF has indicated that throughout this time period, the calculation of the annual RAFs for AUF was inclusive of all of these customers. In addition, AUF shall file revised tariff sheets that incorporate the additional territory within thirty (30) days from the date of this order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated. It is further

ORDERED that Aqua Utilities Florida, Inc.'s quick take amendment of Certificate Nos. 209-W and 154-S to expand its water and wastewater territory, as described in Attachment A, is acknowledged. It is further

ORDERED that this Order shall serve as Aqua Utilities Florida, Inc.'s amended certificates and shall be retained by the Utility. It is further

ORDERED that the existing charges contained in its tariff shall be applied to the customers in the new territory until Aqua Utilities Florida, Inc. is authorized to change them in a subsequent proceeding. It is further

ORDERED that Aqua Utilities Florida, Inc. shall file revised tariff sheets that incorporate the additional territory within thirty (30) days from the date of this Order. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 27th day of April, 2009.



ANN COLE
Commission Clerk

(S E A L)

ELS

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 Office of Commission Clerk, 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 Office of Commission Clerk, 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.

Aqua Utilities Florida, Inc.
Pasco County
Description of Water and Wastewater Territory Added

Jasmine Lakes

In Township 25 South, Range 16 East, Pasco County, Florida

In Section 15:

Commence at the Northwest corner of Section 15 and thence run $S0^{\circ}50'23''E$ a distance of 1680.2 feet to the Point of Beginning; thence run $S89^{\circ}48'12''E$ a distance of 1280.0 feet; thence run $N00^{\circ}10'28''E$ a distance of 338.9 feet; thence run $N89^{\circ}50'0''W$ a distance of 1247.2 feet; thence run southwesterly along the eastern side of the right of way of U. S. Highway No. 19, a distance of 267.8 feet to the Point of Beginning.

Aqua Utilities Florida, Inc.
Pasco County
Description of Composite Water and Wastewater Territory

Jasmine Lakes

In Township 25 South, Range 16 East, Pasco County, Florida

In Sections 14, 15, And 16:

Commence at the Northeast corner of Section 16 and run S02°29'30"E a distance of 1,345.0 feet to the Point of Beginning; thence run S89°55'16"E a distance of 5,177.9 feet; thence run S00°16'01"W a distance of 1,327.6 feet; thence run S89°51'14"E a distance of 636.7 feet; thence run S03°00'18"W a distance of 2,640.8 feet; thence run N89°48'11"W a distance of 472.5 feet; thence run S89°55'38"W a distance of 2,652.0 feet; thence run N00°09'12"E a distance of 1,645.3 feet; thence run due west a distance of 3,222.1 feet; thence run northwesterly along the east right of way line of U. S. Highway No. 19, a distance of 2,442.8 feet to the Point of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Aqua Utilities Florida, Inc.
pursuant to
Certificate Number 209-W

to provide water service in Pasco County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
5605	12/27/72	C-72656-W	Original Certificate
6506	02/11/75	74090-W	Original Certificate
6506-A	06/29/84	74090-W	Territory Correction
PSC-04-0715-FOF-WS	07/21/04	040359-WS	Name Change
18243	10/05/87	870572-WS	Transfer
20140	10/10/88	880472-WS	Transfer
21146	04/28/89	890202-WS	Amendment
23728	11/07/90	900291-WS	Transfer
PSC-97-0427-FOF-WS	04/16/97	970028-WS	Name Change
PSC-99-0482-FOF-WS	03/08/99	981780-WS	Majority Control
PSC-05-1242-PAA-WS	12/20/05	040951-WS	Transfer
PSC-06-0973-FOF-WS	11/22/06	060643-WS	Name Change
PSC-09-0250-FOF-WS	04/27/09	080534-WS	Amendment

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Aqua Utilities Florida, Inc.
pursuant to
Certificate Number 154-S

to provide wastewater service in Pasco County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rules, Regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
5605	12/27/72	C-72657-S	Original Certificate
6506	02/11/75	74091-S	Original Certificate
6506-A	06/29/84	74091-S	Territory Correction
18243	10/05/87	870572-WS	Transfer
20140	10/10/88	880472-WS	Transfer
21146	04/28/89	890202-WS	Amendment
23728	11/07/90	900291-WS	Transfer
PSC-97-0427-FOF-WS	04/16/97	970028-WS	Name Change
PSC-99-0482-FOF-WS	03/08/99	981780-WS	Majority Control
PSC-04-0715-FOF-WS	07/21/04	040359-WS	Name Change
PSC-05-1242-PAA-WS	12/20/05	040951-WS	Transfer
PSC-06-0973-FOF-WS	11/22/06	060643-WS	Name Change
PSC-09-0250-FOF-WS	04/27/09	080534-WS	Amendment