

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for quick-take amendment and application for amendment of Certificate No. 238-W to extend water service to certain territory (Tomoka) in Volusia County, by Aqua Utilities Florida, Inc.

DOCKET NO. 080538-WU
ORDER NO. PSC-09-0256-FOF-WU
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
CERTIFICATE NO. 238-W IN
VOLUSIA COUNTY BY AQUA UTILITIES FLORIDA, INC.
AND DECLINING TO INITIATE A SHOW CAUSE PROCEEDING

BY THE COMMISSION:

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. By Order No. 5397, issued May 5, 1972, we granted a water certificate for the Tomoka service area.¹ There have also been multiple certificate transfers and amendment activities that have occurred over the years (see Attachment A, page 3 of 3). On August 12, 2008, AUF filed both its initial application and completed follow-up application for a "Quick Take" amendment to Certificate 238-W for certain territory at its Tomoka system in Volusia County, pursuant to Rule 25-30.036(2), Florida Administrative Code (F.A.C.). The Utility provides water service to approximately 261 customers at its Tomoka system. The Utility is in the St. Johns River Water Management District. Twelve of the customers currently being served by AUF were recently determined to be outside of AUF's service territory. The Utility indicated that service to these residential customers began sometime between 1988 and 2001. The Utility asserted that a petition for certificate amendments to serve these customers was inadvertently overlooked.

¹ In Docket No. 71583-W, In re: Application of Tomoka Water Works, Inc., for a certificate to operate existing water systems in Volusia County.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

During AUF's 2006 rate case (Docket No. 060368-WS), the Utility determined that it was serving 12 customers outside of its service territory. Shortly after the Utility obtained notice that it was serving outside of its territory, AUF filed this application for quick-take amendment and application for amendment of Certificate No. 238-W to include those customers that it is already serving. The proposed amended area is contiguous to AUF's existing Commission approved service territory.

Both the City of Ormond Beach and the County of Volusia submitted separate letters of objection to the Utility's application. Due to the Utility's efforts to address the City and County's concerns, on October 22, 2008, the City withdrew its letter of objection, and Volusia County has also indicated that it no longer wishes to pursue its objection. We have jurisdiction pursuant to Section 367.045, Florida Statutes (F.S.).

DECISION

Declining to Initiate a Show Cause Proceeding

As stated previously, AUF is serving 12 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 this Commission 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., 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 "[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 Tomoka system in Volusia County prior to serving outside of its certificated area is an apparent violation of Section 367.045(2), F.S., according to its application, the Utility erroneously believed that the territory in question was included in its service area. When the error was discovered, AUF filed the instant application to correct the mistake and include the territory to its service area. The Utility 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 apparent 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, the Utility filed both its initial application and completed follow-up application for a Quick Take amendment to Certificate 238-W for new territory in Volusia County, pursuant to Rule 25-30.036(2), F.A.C. The proposed territory will include 12 residential customers. The Utility has indicated that service to these residential customers began sometime between 1988 and 2001. 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.

We have contacted the Volusia County Health Department and learned that there are no outstanding notices of violation issued for AUF's Tomoka water treatment facility. It appears that the Utility has sufficient capacity to serve the existing and proposed customers. A description of the proposed territory and a list of orders identifying the Utility's authorized service territory are appended to this order as Attachment A. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.036(2), F.A.C. As mentioned in the case background, the City of Ormond Beach and the County of Volusia filed protests to the application that have since been resolved. No other objections to the application have been received and the time for filing such has expired. The Utility has filed revised tariff sheets incorporating the additional territory into its tariff. However, these tariff sheets are still incomplete, and further revision is necessary.

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, existing charges contained in AUF's tariff shall be applied to the customers in the new service territory until AUF is authorized by this Commission to change them in a subsequent proceeding. In addition, AUF shall file revised tariff sheets that incorporate the additional territory within 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 No. 238-W 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 by this Commission 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

(SEAL)

CMK

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.
Volusia County
Description of Water Territory Added

Tomoka View

Township 14 South, Range 32 East

Commence From The Northwest Corner Of Section 30 And Run 2,676.4 Ft S31°14'10"E To The Point Of Beginning, Thence Run N88°21'16"E A Distance Of 743.1 Ft, Thence Run S34°36'56"W A Distance Of 249.9 Ft, Thence Run S88°30'19"W A Distance Of 115.0 Ft, Thence Run S1°13'5"W A Distance Of 166.0 Feet, Thence Run S89°29'49"W A Distance Of 479.3 Ft, Thence Run N0°34'26"W A Distance Of 357.5 Ft To The Point Of Beginning.

Aqua Utilities Florida, Inc.
Volusia County
Composite Water Service Area

Tomoka View

Township 14 South, Range 32 East

Commence From The Northwest Corner Of Section 30 And Run 2,989.4 Ft S27°42'54"E To The Point Of Beginning, Thence Run N0°34'26"W A Distance Of 357.3 Ft, Thence Run N0°54'2"W A Distance Of 2,119.0 Ft, Thence Run N31°1'35"E A Distance Of 155.2 Ft, Thence Run N89°03'29"E A Distance Of 1,095.2 Ft, Thence Run S7°13'23"E A Distance Of 998.9 Ft, Thence Run S49°17'27"E A Distance Of 616.4 Ft, Thence Run S42°17'37"W A Distance Of 277.1 Ft, Thence Run S35°25'38"W A Distance Of 778.4 Feet, Thence Run S87°23'57"W A Distance Of 354.4 Feet, Thence Run S34°36'56"W A Distance Of 249.9 Feet, Thence Run S88°30'19"W A Distance Of 115.0' Feet, Thence Run S01°13'05"W A Distance Of 166.0 Feet, Thence Run S89°29'49"W A Distance Of 479.3 Feet To The Point Of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Aqua Utilities Florida, Inc.
pursuant to
Certificate No. 238-W

to provide water service in Volusia 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>
5397	05/02/72	71583-W	Original Certificate
5397-A	03/21/73	71583-W	Correction
8318	05/22/78	770282-WS (AP)	Original Certificate
20869	03/09/89	880605-WS	Transfer
PSC-93-1449-FOF-WS	10/04/93	930153-WS	Amendment
PSC-97-0427-FOF-WS	04/16/97	970028-WS	Name Change
PSC-00-1659-PAA-WU	09/18/00	000334-WU	Transfer
PSC-05-1242-PAA-WS	12/20/05	040951-WS	Transfer
PSC-09-0256-FOF-WU	04/27/09	080538-WU	Amendment