

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of  
Certificates 414-W and 347-S to extend water  
and wastewater service areas to include certain  
land in Highlands County by Lake Placid  
Utilities, Inc.

DOCKET NO. 100301-WS  
ORDER NO. PSC-10-0489-FOF-WS  
ISSUED: August 5, 2010

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR  
NATHAN A. SKOP  
ART GRAHAM  
RONALD A. BRISÉ

ORDER AMENDING WATER AND WASTEWATER CERTIFICATES

BY THE COMMISSION:

Background

On May 19, 2010, Lake Placid Utilities, Inc. (Lake Placid or Utility) filed an application to amend Certificate Nos. 414-W and 347-S to add water and wastewater territory to its service area in Highlands County, pursuant to Section 367.045(2), Florida Statutes (F.S.). Lake Placid is a Class B utility providing water and wastewater service to approximately 122 water and 192 wastewater customers. The Utility's 2009 annual report shows combined water and wastewater annual operating revenues of \$129,585 and a net loss of \$6,434.

The Utility filed its application in response to a recent review of the Utility's service territory which revealed that the Utility is providing water and wastewater service to nine connections located outside of its certificated territory. The area to be added is adjacent to the Utility's existing certificated water and wastewater service areas. The proposed territory will have the potential to accommodate 52 connections in the Village Del Mar development. We have jurisdiction over the amendment application pursuant to Section 367.045, F.S.

Analysis and Ruling

Show Cause

As stated in the case background, a review of the Utility's service territory revealed that the Utility is providing service to nine water and wastewater connections that are outside of its certificated territory. The Utility indicated that for some unknown reason, the requirement to file a petition for certificate amendments to serve a newly developed subdivision was inadvertently overlooked. When Lake Placid discovered the error, it filed the instant application to correct the mistake to include the newly developed subdivision.

DOCKET NUMBER DATE

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FPSC-COMMISSION CLERK

Section 367.045(2), F.S., 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 this Commission. Section 367.161(1), F.S., authorizes this 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, F.S. 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, F.S. 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, F.A.C., 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 "in our view, '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 Lake Placid's failure to obtain our approval prior to serving outside of its certificated service area appears to be in violation of Section 367.045(2), F.S., there are circumstances which appear to mitigate the Utility's actions. Nine connections have been made to the water and wastewater system, although the homes are currently vacant. The proposed territory is adjacent to its service area, and Lake Placid had assumed that the territory was already within its service territory. Upon becoming aware that the areas were not located within its certificated territory, the Utility, without delay, filed an application for amendment of its certificates to include the additional areas.

We do not believe 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 order Lake Placid to show cause why it should not be fined for failing to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

#### Certificate Amendment

On May 19, 2010, the Utility filed an application to amend Certificate Nos. 414-W and 347-S to add water and wastewater territory to its service area in Highlands County, pursuant to Section 367.045(2), F.S. The Utility's application is in compliance with Section 367.045, F.S., and Rule 25-30.036, F.A.C. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.036, F.A.C. No objections to the application have been received, and the time for filing such has expired.

According to the application, the Utility has the ability to serve the proposed areas, including the necessary financial and technical expertise. Lake Placid is one of several water and wastewater systems in Florida owned by Utilities, Inc. In addition, the Utility indicated that its current water and wastewater systems have sufficient capacity to serve the proposed 52 connections. Only 9 homes have been connected to the system, and they are currently vacant. There are no outstanding notices of violation issued by the Department of Environmental Protection for Lake Placid's water and wastewater facilities. Also, the Utility provided evidence

of ownership of the water and wastewater treatment plant sites and adequate service territory maps and territory descriptions.

Based on the foregoing, we find that it is in the public interest to approve the application filed by Lake Placid to amend Certificate Nos. 414-W and 347-S to include the area described in Attachment A. Composite territory descriptions which reflect the combined existing and amended areas are also included in Attachment A. The resultant order shall serve as Lake Placid's amended certificates and shall be retained by the Utility. Pursuant to Rule 25-9.044(1), F.A.C., the Utility shall charge the customers in the territory added herein the rates and charges contained in the current tariff until authorized to be changed by this Commission.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Lake Placid Utilities, Inc. shall not be required to show cause why it should not be fined for failing to obtain an amended certificate of authorization prior to serving outside of its certificated territory. It is further

ORDERED that Lake Placid Utilities, Inc.'s Certificate Nos. 414-W and 347-S shall be amended to include the area described in Attachment A. It is further

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

ORDERED that Lake Placid Utilities, Inc. shall charge the customers in the territory added herein the rates and charges contained in the current tariff until authorized to be changed by this Commission. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 5th day of August, 2010.



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ANN COLE  
Commission Clerk

( S E A L )

ARW

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.

LAKE PLACID UTILITIES, INC  
DESCRIPTION OF TERRITORY ADDED  
WATER AND WASTEWATER

Township 37 South, Range 30 East

Sections 20 and 21

Commence from the Southwest corner of Section 21 and travel North 08°13'14" West a distance of 809.60 feet to the Point of Beginning; thence North 28°42'23" West a distance of 584.34 feet; thence North 61°17'37" East a distance of 637.30 feet more or less to a point located on the western shore of Lake Grassy; thence follow the shoreline in a Southeasterly direction to a point located North 15°17'42" East a distance of 1,115.40 feet more or less from the Southwest corner of Section 21; thence South 11°20'51" East a distance of 24.68 feet; thence South 01°12'12" East a distance of 137.00 feet; thence South 00°04'29" West a distance of 163.31 feet; thence South 89°42'27" West a distance of 317.73 feet; thence North 01°13'13" West a distance of 50.08 feet; thence North 89°08'58" West a distance of 98.73 feet to the Point of Beginning.

Section 28

Commence from the Southeast corner of the Northwest  $\frac{1}{4}$  of Section 28; thence North 89°48'35" East a distance of 2,057.30 feet to the Point of Beginning; thence North 00°03'556" East a distance of 490.95 feet; thence South 89°39'04" East a distance of 559.00 feet; thence South 00°03'56" West a distance of 485.69 feet; thence South 89°48'35" West a distance of 559.00 feet to the Point of Beginning.

LAKE PLACID UTILITIES, INC.  
DESCRIPTION OF CONSOLIDATED WATER AND WASTEWATER TERRITORY

Township 37 South, Range 30 East

Section 20, Section 21, and Section 28

Beginning at the Southeast corner of the Northwest  $\frac{1}{4}$  of Section 28; thence North  $89^{\circ}48'35''$  East a distance of 2,057.30 feet; thence North  $00^{\circ}03'56''$  East a distance of 490.95 feet; thence South  $89^{\circ}39'04''$  East a distance of 559.00 feet; thence South  $00^{\circ}03'56''$  West a distance of 485.69 feet; thence North  $89^{\circ}48'35''$  East a distance of 23.70 feet; thence South  $00^{\circ}04'03''$  East a distance of 900 feet; thence North  $89^{\circ}44'59''$  West a distance of 3,916.15 feet, more or less, to the East Right of Way of U. S. Highway 27; thence following the Right of Way in a Northwesterly direction 5,198 feet, more or less; thence North  $61^{\circ}17'37''$  East a distance of 637.30 feet, more or less, to a point located on the western shore of lake Grassy; thence follow the shoreline in a Southeasterly direction to a point located North  $15^{\circ}17'42''$  East a distance of 1,115.40 feet, more or less, from the Northwest corner of Section 28; thence South  $11^{\circ}20'51''$  East a distance of 24.68 feet; thence South  $01^{\circ}12'12''$  East a distance of 137.00 feet; thence South  $00^{\circ}03'29''$  West distance of 163.31 feet; thence North  $89^{\circ}42'27''$  East a distance of 851.83 feet to a point located on the western shoreline of Lake Grassy; thence following the shoreline in an Easterly direction to a point located North  $72^{\circ}42'42''$  East a distance of 1,777.70 feet from the Northwest corner of Section 28; thence South  $00^{\circ}09'31''$  East a distance of 523.75 feet to the northern boundary of Section 28; thence following northern boundary in a Easterly direction 942.23 feet, more of less; thence South  $00^{\circ}09'31''$  East a distance of 2,628.58 feet to the Point of Beginning.

**FLORIDA PUBLIC SERVICE COMMISSION**  
**authorizes**  
**Lake Placid Utilities, Inc.**  
**pursuant to**  
**Certificate Number 414-W**

to provide water service in Highlands County in accordance with the provision of Chapter 367, Florida Statutes, 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>
12447	09/06/83	830141-WS	Grandfather
PSC-94-1465-FOF-WS	11/29/94	930570-WS	Transfer
PSC-06-0094-FOF-WS	02/09/06	050499-WS	Transfer
PSC-10-0489-FOF-WS	08/05/10	100301-WS	Amendment

**FLORIDA PUBLIC SERVICE COMMISSION**  
**authorizes**  
**Lake Placid Utilities, Inc.**  
**pursuant to**  
**Certificate Number 347-S**

to provide sewer service in Highlands County in accordance with the provision of Chapter 367, Florida Statutes, 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>
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