

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 941303-WU
certificate to provide water) ORDER NO. PSC-96-0584-FOF-WU
service in Citrus County by) ISSUED: May 6, 1996
Forest Hills Water System.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER GRANTING WATER CERTIFICATE NO. 568-W AND REQUIRING
FILING OF ANNUAL REPORT AND PAYMENT OF REGULATORY ASSESSMENT FEES
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER ESTABLISHING RATES AND CHARGES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein regarding our establishing rates and charges is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

Forest Hills Water System (Forest Hills or utility) is an existing Class C utility in Citrus County, which currently provides water service to forty-seven homes, a twelve-unit apartment complex, and two duplexes. At buildout, the utility anticipates providing water service to a total of sixty-eight homes, a twelve-unit apartment complex, two duplexes, and five general service customers. The utility's current annual operating revenues are estimated to be \$11,340 and will increase to approximately \$16,020 at buildout. The utility's requested service territory includes a small portion of land which is not currently being served.

On December 15, 1994, Forest Hills filed an application for a certificate to provide water service in Citrus County. The utility's application was found to be deficient. The utility corrected the deficiencies on March 15, 1996.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

The utility was established in 1972. The utility's facilities consist of one water treatment plant and one water transmission and distribution system. The current owner purchased the utility on November 21, 1990. According to the application, the owner purchased the existing utility without knowledge or concept of the Public Service Commission. After being informed by our staff that the utility was subject to Commission jurisdiction and was operating in violation of Section 367.031, Florida Statutes, the utility promptly filed this application for a water certificate.

No Show Cause Required

As previously noted, Forest Hills was established in 1972. The Commission obtained jurisdiction over Citrus County on December 18, 1973, and has retained jurisdiction since that time. Our staff first learned of the existence of the utility in the latter part of 1994, and immediately requested that it file an application for a certificate of authorization pursuant to Section 367.031, Florida Statutes. On December 15, 1994, Forest Hills filed an application for a certificate of authorization to provide water service.

Section 367.031, Florida Statutes, requires utilities that are subject to Commission jurisdiction to obtain a certificate of authorization or an order exempting them from Commission regulation. 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.

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). Thus, any intentional act, such as the utility's failure to obtain a certificate of authorization or an order exempting it from Commission regulation, would meet the standard for a "willful violation." 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., 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Operating a utility without obtaining a certificate of authorization or an order of exemption from Commission regulation is an apparent violation of Section 367.031, Florida Statutes. However, the current owner purchased the utility on November 21, 1990, without knowledge or concept of the Commission. Moreover, the utility promptly filed its application for a certificate of authorization once it became aware of its statutory obligation to do so. For these reasons, we do not find that this utility's apparent violation of Section 367.031, Florida Statutes, rises to the level of warranting that a show cause order be issued. Therefore, Forest Hills shall not be ordered to show cause.

Application

Except as previously discussed, 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 original certificate for an existing utility currently charging for service. The application contains a check in the amount of \$500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence that the utility owns the land upon which its facilities are located, as required by Rule 25-30.034(1)(e), Florida Administrative Code.

Forest Hills has provided adequate service territory and system maps and a territory description, as prescribed by Rule 25-30.034(1)(h), (i) and (j), Florida Administrative Code. A copy of the description of the territory is appended to this Order, and is incorporated herein by reference.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers in the proposed territory. We received no objections to the notice of application.

Regarding the applicant's financial and technical ability, the application states that the owner had and continues to have financial stability for operations of the plant. Also, in order to maintain a high criteria in obtaining the best possible drinking water available for the customers, the owner has contracted licensed technicians to perform all plant functions. Along with regular testing, the utility maintains rigid guidelines for plant testing. Although the current owner had no knowledge of the Commission, the application states that the water plant has always operated under guidelines of State and County regulations regarding testing, reports, and so forth. We contacted the Department of

Environmental Protection and learned that the utility's water facilities are in satisfactory condition and there are no outstanding violations.

Additionally, the utility's requested territory includes a small area which is not currently being served. The additional territory adjoins the utility's current service territory and a portion of it is owned by the utility owner. Although the County is serving a small portion of land which is adjacent to the utility's requested service territory, the County has indicated that it does not plan to serve the additional territory requested by the utility. Although there is not an immediate need for service, it is anticipated that there will be a need for service at some point in the future. Because the land adjoins the utility's current service territory and the County does not desire to serve this area, we believe it is reasonable for Forest Hills to provide water service to the additional territory.

Based on the foregoing, we find it is in the public interest to grant the application for an original certificate. Accordingly, we hereby grant Water Certificate No. 568-W to Forest Hills Water System to serve the territory described in Attachment A.

Rates and Charges

The utility's present rates and charges are as follows:

Bimonthly Service Rates

Residential, General, and
Multi-Residential Service

Flat Rate \$ 30

Miscellaneous Service Charges

Normal Reconnection Fee \$ 45
Late Fee \$ 5

Service Availability Charges

Connection Charge:
All Customers \$920

The utility provides service to the Forest Hills Subdivision. The utility's service availability policy is that all new customers are required to pay a \$920 connection charge for initiation of service at a location where service did not previously exist.

Regarding the date and under what authority the current rates and charges were established, the application states that when the new owner purchased the utility, there was an established flat rate of \$10.00 per unit per month. On January 1, 1992, the new owner increased that rate to \$15.00 per unit per month, which is billed on a bimonthly basis. Additionally, the utility charges a \$5 late fee on delinquent bills.

Commission policy in this type of proceeding has been to continue the utility's existing charges until the utility files an application for a rate proceeding. Accordingly, the utility's current charges in this case shall be continued with one modification. The utility's current connection charge, \$920, includes the cost of the meter installation. We find that it would be more appropriate to show the meter installation cost as a separate charge. Therefore, the utility's current connection charge shall be itemized to reflect a \$125 meter installation charge and a \$795 system capacity charge.

The utility has filed a tariff which reflects the current rates and charges. Therefore, the utility shall file a revised tariff sheet reflecting the separate meter installation and system capacity charges within thirty days of the effective date of this Order. The tariff sheets will be approved upon the verification that the revised tariff sheets are consistent with our decision herein.

Regulatory Assessment Fees

Pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code, annual reports and regulatory assessment fees are due from regulated utilities regardless of whether a certificate has been granted. Although Forest Hills has been subject to this Commission's jurisdiction since December 18, 1973, we did not learn of its existence until late 1994. The utility was advised of the Commission's jurisdiction and its responsibility to obtain a certificate at that time. Therefore, the utility shall file an annual report and remit regulatory assessment fees for 1995 within forty-five days of the issuance date of this Order.

Upon expiration of the protest period, if there are no timely protests to the proposed agency action issues, no further action will be required and the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Forest Hills Water System, 6050 West Gulf to Lake Highway, Crystal River,

Florida 34429, is hereby granted Water Certificate No. 568-W to serve the territory described in Attachment A. It is further

ORDERED that Forest Hills Water System shall charge the rates and charges approved in the body of this Order until authorized to change by this Commission in a subsequent proceeding. It is further

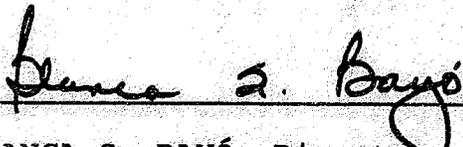
ORDERED that Forest Hills Water System shall submit and have approved revised tariff sheets within thirty days of the effective date of this Order. The revised tariff sheets will be approved upon the expiration of the protest period and upon our staff's verification that the pages are consistent with our decision herein. It is further

ORDERED that Forest Hills Water System shall file an annual report and remit regulatory assessment fees for 1995 within forty-five days of the issuance date of this Order. It is further

ORDERED that the provision of this Order regarding our establishment of rates and charges is issued as proposed agency action and shall become final unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director of the Division of Records and Reporting at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 6th day of May, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RGC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

As identified in the body of this Order, our action establishing rates and charges is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this Order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 28, 1996. In the absence of such a petition, this Order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this Order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date 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.

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 Records and Reporting within fifteen (15) days of the issuance of

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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 or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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.

ATTACHMENT A

FOREST HILLS WATER SYSTEM

TERRITORY DESCRIPTION

The following described lands located in portions of Section 30, Township 18 South, Range 18 East, Citrus County, Florida:

That part of the Southwest 1/4 of the Southeast 1/4 of Section 30, Township 18 South, Range 18 East, Citrus County, Florida, lying North of State Road No. 44 and Southwesterly of the Florida Power Corp. Power Line.

Less and Except the following:

From the NE corner of the SW 1/4 of the SE 1/4 run South 0° East along the East line of the SW 1/4 of the SE 1/4 for 802 feet more or less; thence South 90° West 542 feet to the Point of Beginning (POB); thence South 0° West for 80.18 feet; thence South 90° East for 25 feet; thence South 0° West for 235.65 feet more or less to the intersection of the North Right of Way line of State Road #44; thence Northwesterly along the North Right of Way line of State Road #44 to the intersection line of the West line of the Southwest 1/4 of the Southeast 1/4; thence North 0° 11' 48" West along the West line for 149.07 feet; thence North 88° 46' 34" East for 150 feet; thence South 0° 13' 35" East for 186.01 feet to the intersection of the North Right of Way line of State Road #44; thence Southwesterly along the North Right of Way line of State Road #44 for 51.26 feet; thence North 0° East for 151.87 feet; thence North 90° East for 311.41 feet; thence South 0° East for 80.18 feet; thence South 90° East for 193.98 feet; thence South 0° East for 81.08 feet; thence South 90° East for 143.97 feet to the Point of Beginning.