

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of Kirby D.) DOCKET NO. 951272-SU
Morgan, Inc. For a Certificate) ORDER NO. PSC-96-0564-FOF-SU
to Provide Wastewater Service in) ISSUED: April 30, 1996
Columbia County.)
_____)

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 CERTIFICATE AND REQUIRING
KIRBY D. MORGAN, INC. TO FILE A 1995 ANNUAL REPORT
AND PAY REGULATORY ASSESSMENT FEES FOR JUNE
THROUGH DECEMBER OF 1995

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER SETTING RATES AND CHARGES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is final except for setting rates and charges which 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

On October 26, 1995, Kirby D. Morgan, Inc. (KDMI or utility) filed an application with this Commission for a certificate to provide wastewater service in Columbia County. The utility, which has been in existence since 1993, consists of a wastewater treatment plant and a wastewater collection system. It serves approximately 125 single family homes in Eastside Village Unit II. The utility has a maximum capacity at buildout of 225 customers.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Water service is provided to the development by Lenvil Dicks Water Systems.

The utility was originally owned by Greene-Horne Corporation (GHC). KDMI purchased the system in June of 1995. At the time of the purchase, GHC informed Kirby Morgan that it was in the process of applying for a certificate, but had not done so. Upon purchasing the utility, KDMI attempted to convince the homeowners association to run the wastewater plant, but the homeowners could not reach an agreement. As stated previously, KDMI filed an application for a wastewater certificate on October 26, 1995. Since KDMI owned and operated the system from June, 1995, until October, 1995, without a certificate or order granting exemption, it is in violation of Section 367.031, Florida Statutes.

Show Cause

Section 367.031, Florida Statutes, which states, in part, "Each utility subject to the jurisdiction of the commission must obtain . . . a certificate of authorization to provide water or wastewater service or an order recognizing that the system is exempt from regulation as provided by s. 367.022 . . ." KDMI has been providing wastewater service to the residents of Eastside Village Unit II since it purchased the system in June of 1995 without a certificate or order finding it exempt from Commission regulation. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, 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. 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 "[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." Id. at 6.

The delay by KDMI to obtain a certificate or order finding it exempt from Commission regulation prior to providing service appears to be due to its attempt to convince the homeowners association to operate the utility. Upon failure of the association to reach agreement, KDMI filed an application for a certificate. The application was filed within a few months of the purchase.

Although KDMI failed to obtain a certificate prior to providing service, we do not find that the violation of Section 367.031, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Accordingly, a show cause proceeding shall not be initiated.

Application

Except as discussed previously, the application is in compliance with Section 367.045, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$750, in accordance with Rule 25-30.020, Florida Administrative Code. In addition, KDMI provided a warranty deed as evidence that the utility owns the land upon its facilities are located, as required by Rule 25-30.034(1)(e), Florida Administrative Code.

An adequate territory description and system and territory maps have been provided, pursuant to Rule 25-30.034(1)(h), (i) and (j), Florida Administrative Code. A description of the territory KDMI has requested to serve is shown on Attachment A of this order, which by reference is incorporated herein.

KDMI has provided proof of compliance with the noticing requirements of Rule 25-30.030, Florida Administrative Code, including notice to the customers in the proposed territory. No objections to the application have been received and the time for filing such has expired.

KDMI has contracted with Three Rivers Utility, Inc. (Three Rivers) to operate the wastewater system. Three Rivers is a Class A wastewater plant operator, which holds License No. 6611. In addition, according to information provided with the application, it appears that KDMI has the financial resources to ensure the continued operation of the system.

Based on the foregoing, we find that it is in the public interest to grant KDMI Certificate No. 501-S to serve the territory described in Attachment A.

Rates and Charges

KDMI charges a flat rate of \$13.00 per month per residence for wastewater service. The rate was established by the Board of Directors of Eastside Village Maintenance Association on January 12, 1993, prior to the purchase of the utility by KDMI. KDMI does not collect customer deposits and none are approved herein.

KDMI proposes to charge the following miscellaneous service charges:

<u>Type of Service</u>	<u>Charge</u>
Initial Connection	\$ 15.00
Normal Reconnection	\$ 15.00
Violation Reconnection	Actual Cost
Premises Visit	.\$ 10.00

Currently, there is no service availability charge. The developer is the utility owner. The cost of extending utility service to the undeveloped lots is recovered by the developer/owner in the purchase price of the lot. KDMI's service availability policy allows it to recover the costs for tap-in service, if such service is requested by the property owner. The utility's service availability policy is as follows:

The utility will install the main wastewater line to the boundary of the contributor. The contributor property owner is responsible for all costs necessary to connect their personal sewage lines to the main wastewater line provided by the utility. The utility may provide this tap in service upon the request of the contributor property owner and will be invoiced for the actual cost incurred to connect to the utility main wastewater line.

Since KDMI's books and records have not been audited by the Commission, we cannot determine if any contributions-in-aid-of-construction (CIAC) exist. Rule 25-30.580(1)(b), Florida Administrative Code, states that the minimum amount of CIAC should not be less than the percentage of facilities and plant represented by the sewage collection system. Rule 25-30.580(2), Florida Administrative Code, allows the Commission to exempt a utility from the guidelines of Subsection (1) where compliance would be unreasonably difficult. Therefore, we find it appropriate to exempt KDMI from the requirements of Rule 25-30.580(1), Florida Administrative Code, until rate base is established.

We find KDMI's current and proposed rates and charges to be reasonable and they are approved. KDMI shall charge these rates and charges until authorized to change by this Commission in a subsequent proceeding. KDMI has filed tariff sheets reflecting the rates and charges approved herein. The rates and charges shall be effective for connections made or service rendered on or after the stamped approval date on the tariff sheets.

1995 Annual Report and 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 or not a certificate has been granted. The utility has been subject to Commission regulation since it was established in 1993. KDMI has been providing utility service and collecting revenues since it purchased the utility on June 1, 1995. Therefore, we find it appropriate to require KDMI to file an annual report for 1995 and pay regulatory assessment fees for June through December of 1995. KDMI shall file the 1995 annual report and pay the regulatory assessment fees within 45 days of the date of this Order.

It is, therefore,

ORDERED by the Florida Public Service Commission that Certificate No. 501-S is hereby granted to Kirby D. Morgan, Inc., Post Office Drawer 2939, Lake City, Florida 32026, to provide service to the territory described in Attachment A of this Order. It is further

ORDERED that Kirby D. Morgan, Inc. is exempt from the requirements of Rule 25-30.580(1), Florida Administrative Code, until rate base is established in a subsequent proceeding. It is further

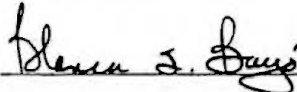
ORDERED that the rates and charges, as set forth in the body of this Order, are hereby approved. Kirby D. Morgan, Inc. shall charge the rates and charges until authorized to change by this Commission in a subsequent proceeding. The rates and charges shall be effective for connections made or service rendered on or after the stamped approval date on the tariff sheets. It is further

ORDERED that Kirby D. Morgan, Inc. shall file a 1995 annual report and pay regulatory assessment fees for June through December, 1995, within 45 days of the date of this order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. 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 30th day of April, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 setting 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 21, 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 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

KIRBY D. MORGAN, INC.

TERRITORY DESCRIPTION

A PART OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 17 EAST AND A PART OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 17 EAST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commence at the Southwest corner of the Southeast quarter of said Section 34 and run North 06° 20' 43" East along the West line thereof 136.68 feet to the Northwest corner of Lot 17 Block "A" of Eastside Village Unit 2 for POINT OF BEGINNING.

1. Thence continue North 06° 20' 43" East, 1330.74 feet, to the Southeasterly right-of-way of Baya Avenue;
2. thence Northeasterly along the arc of a curve to the left, having a radius of 1474.39, an included angle of 05° 28' 48", whose chord bearing is North 53° 33' 25" East and a chord distance of 140.96 feet;
3. thence North 87° 30' 43" East, 230.41 feet, to the Southwesterly right-of-way line of the G.S. & F Railroad;
4. thence South 52° 07' 56" East along said right-of-way, 162.49 feet;
5. thence South 06° 20' 43" West, 483.65 feet;
6. thence South 89° 51' 02" East, 357.36 feet;
7. thence North 13° 20' 19" East, 214.29 feet, to said Railroad right-of-way;
8. thence South 52° 07' 56" East along said right-of-way, 1170.54 feet;
9. thence South 31° 47' 05" West, 335.04 feet, to the Northeast corner of Suzanne Subdivision Unit 5, according to the Plat thereof recorded in Plat Book 4 Page 100 of the Public Records of Columbia County, Florida;

10. thence continue South $31^{\circ} 47' 05''$ West, 129.2 feet, to the North line of said Section 3;
11. thence South $89^{\circ} 50' 36''$ West, 60 feet, to the West right-of-way of Pearl Street;
12. thence South $01^{\circ} 23' 36''$ East along said right-of-way, 129.6 feet more or less, to the centerline of a creek;
13. thence Southwesterly along the meander of the centerline of said creek, which follows near to the following chord bearings and distances:
 - a) South $63^{\circ} 04' 54''$ West, 30.86 feet;
 - b) South $26^{\circ} 06' 04''$ West, 64.19 feet;
 - c) South $80^{\circ} 25' 24''$ West, 62.15 feet;
 - d) South $34^{\circ} 39' 00''$ West, 29.11 feet;
 - e) South $33^{\circ} 57' 54''$ West, 50.37 feet;
 - f) South $72^{\circ} 18' 44''$ West, 88.16 feet;
 - g) South $85^{\circ} 29' 07''$ West, 62.81 feet;
 - h) North $74^{\circ} 00' 46''$ West, 18.73 feet;
 - i) North $79^{\circ} 59' 46''$ West, 23.82 feet;
 - j) South $81^{\circ} 11' 14''$ West, 59.00 feet;
 - k) South $64^{\circ} 54' 26''$ West, 36.30 feet;
 - l) South $51^{\circ} 25' 14''$ West, 41.00 feet;
 - m) South $76^{\circ} 17' 04''$ West, 71.40 feet

to the Southwest corner of Lot 1 of Suzanne Subdivision Unit 5 according to the Plat thereof recorded in Plat Book 4 Page 100 of the Public Records of Columbia County, Florida;

14. thence continue along said creek;
 - a) South $79^{\circ} 48' 17''$ West, 43.15 feet;
 - b) South $27^{\circ} 01' 33''$ West, 30.42 feet;
 - c) North $29^{\circ} 30' 01''$ West, 26.27 feet;
 - d) South $33^{\circ} 14' 49''$ West, 46.87 feet;
 - e) South $68^{\circ} 29' 07''$ West, 38.38 feet;
 - f) North $82^{\circ} 41' 45''$ West, 31.13 feet;
 - g) South $55^{\circ} 33' 23''$ West, 43.13 feet;
 - h) South $38^{\circ} 59' 55''$ West, 25.00 feet,

to the Southwest corner of Lot 3 Block "D" of Eastside Village Unit 2 according to the Plat thereof recorded in Plat Book 5, Pages 137-137A of the said Public Records;

15. thence continue along the meander of the centerline of said creek;

- a) South 38° 59' 55" West, 21.85 feet;
- b) North 52° 04' 35" West, 21.08 feet;
- c) South 18° 38' 29" West, 29.62 feet;
- d) South 67° 53' 37" West, 44.07 feet;
- e) North 19° 38' 08" West, 51.61 feet;
- f) South 80° 14' 19" West, 89.19 feet;
- g) North 30° 21' 55" West, 19.42 feet;
- h) South 62° 43' 43" West, 92.18 feet;
- i) South 05° 31' 19" East, 52.04 feet;
- j) South 68° 39' 52" West, 81.80 feet;
- k) North 65° 04' 52" West, 105.25 feet;
- l) South 20° 53' 15" West, 52.55 feet;
- m) North 82° 46' 58" West, 109.19 feet;
- n) South 66° 03' 58" West, 120.37 feet;
- o) South 42° 23' 20" West, 86.66 feet

to the Southwest corner of Lot 5 of Eastside Village Unit III as per Plat thereof recorded in Plat Book 6 Page 65 of said Public Records;

16) thence continue along the meander of said centerline,

- a) South 47° 17' 22" West, 216.25 feet;
- b) South 34° 02' 02" West, 41.48 feet;
- c) South 74° 10' 53" West, 285.00 feet;
- d) South 08° 09' 42" West, 19.86 feet;
- e) South 58° 21' 50" West, 24.41 feet;
- f) South 34° 40' 57" West, 35.69 feet;
- g) South 08° 50' 16" West, 27.89 feet;
- h) South 11° 25' 26" East, 71.85 feet;
- i) South 51° 23' 04" West, 70.94 feet;
- j) South 72° 37' 09" West, 26.37 feet;
- k) South 55° 40' 39" West, 57.01 feet;
- l) South 15° 16' 39" West, 61.72 feet;
- m) South 82° 45' 03" West, 18.63 feet;
- n) South 60° 46' 49" West, 46.00 feet;
- o) South 48° 33' 19" West, 61.39 feet;
- p) South 66° 42' 05" West, 32.29 feet;
- q) South 46° 52' 45" West, 35.78 feet;
- r) South 39° 43' 00" West, 61.06 feet

to its intersection with the South line of the Northeast quarter of the Northwest quarter of said Section 3;

17) thence South 88° 52' 08" West, 605.43 feet to the Southwest corner thereof;

- 18) thence North $01^{\circ} 49' 57''$ West along the West line of said Northeast quarter of the Northwest quarter, 1070.99 feet;
- 19) thence North $88^{\circ} 56' 56''$ East, 134.92 feet;
- 20) thence Northeasterly along the arc of a curve to the right having a radius of 224.54 feet, a chord bearing of North $30^{\circ} 07' 31''$ East, and a chord distance of 92.16 feet, for an arc distance of 92.83 feet;
- 21) thence South $30^{\circ} 01' 43''$ East, 171.63 feet to the Southernmost corner of Lot 1 Block "F" of said Eastside Village Unit 2;
- 22) thence North $22^{\circ} 46' 18''$ East, 98.92 feet;
- 23) thence North $88^{\circ} 55' 54''$ East, 860.0 feet to the Southeast corner of Lot 12 of said Block "F";
- 24) thence North $01^{\circ} 04' 06''$ East, 39.32 feet;
- 25) thence South $87^{\circ} 19' 34''$ East, 193.38 feet to the Southeast corner of Lot 1, Block "E", of said Eastside Village Unit 2;
- 26) thence North $01^{\circ} 04' 06''$ East, 83.17 feet to the South line of Dogwood Drive;
- 27) thence North $88^{\circ} 55' 54''$ East, 115.77 feet;
- 28) thence South $46^{\circ} 56' 00''$ East, 22.28 feet;
- 29) thence North $88^{\circ} 45' 28''$ East, 67.24 feet;
- 30) thence Northwesterly along the arc of a curve to the right having a radius of 40.0 feet, an included angle of $85^{\circ} 20' 31''$, for an arc distance of 59.58 feet;
- 31) thence North $05^{\circ} 53' 56''$ West, 28.2 feet;
- 32) thence North $06^{\circ} 20' 43''$ East, 65.71 feet to the Southwest corner of Lot 2 of Block "B" of said Eastside Village Unit 2;
- 33) thence North $88^{\circ} 45' 28''$ East, along the South line of said Lot 2 and extending across the South line of Lots 3, 4, 5 and 6 of said Block "B", 398.29 feet;
- 34) thence South $82^{\circ} 32' 32''$ East, 94.57 feet to the Southeast corner of Lot 1 Block "C" of said Eastside Village Unit 2;

- 35) thence North $00^{\circ} 47' 32''$ West along the East line of said Lot 1 Block "C", 108.0 feet to the South right-of-way of Pearl Street;
- 36) thence North $82^{\circ} 32' 32''$ West, 67.32 feet;
- 37) thence North $87^{\circ} 45' 10''$ West, 100.66 feet;
- 38) thence North $00^{\circ} 30' 09''$ East, 11.02 feet to the centerline of Pearl Street;
- 39) thence South $88^{\circ} 45' 28''$ West along said centerline, 332.02 feet;
- 40) thence North $06^{\circ} 20' 43''$ East, 13.51 feet;
- 41) thence North $83^{\circ} 39' 17''$ West, 144.0 feet to the POINT OF BEGINNING.