

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

APRIL 24, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (REDEMAN) *RRH*
DIVISION OF LEGAL SERVICES (CROSBY) *CS* *cc: jgw/bl*

RE: DOCKET NO. 970085-WU - COUNTY-WIDE UTILITY COMPANY, INC.
- APPLICATION FOR AMENDMENT OF CERTIFICATE NO. 390-W
COUNTY: MARION

AGENDA: MAY 6, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\970085WU.DCS

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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CASE BACKGROUND

County-Wide Utility Company, Inc. - (CWU or utility) provides water service in Marion County and serves approximately 270 water customers. The annual report for 1995 shows that the annual operating revenue is \$67,828 and the net operating loss is \$2,929. The utility is a Class C utility company under Commission jurisdiction.

On January 17, 1996, the utility applied for an amendment of Water Certificate No. 390-W in Marion County to include territory that it has been serving since 1990 and a new area that is adjacent to the service area. If granted the amendment, the utility will be authorized to serve Units One, Two, Three, Four, and Five of the Bahia Oaks Subdivision, which is the complete development area. Currently, the utility only has authorization to serve Units One and Two, and some adjacent vacant area.

At the time of the application, the utility was serving 110 residential water customers in Unit Three that are outside of its certificated area. Also, the utility's service area granted by Order No. 11868, issued on April 21, 1983, in Docket No. 810369-WU overlaps another utility's service area. Staff is recommending correction of the territory description approved in Order No. 11868.

Staff has authority to administratively approve applications for amendment when no objections have been filed and the application is without controversy. This case is being brought to the attention of the Commission to address the utility's alleged violation of Section 367.045(2), Florida Statutes, in that the utility is serving outside of its certificated area. The alleged violation of Section 367.045(2), Florida Statutes, will be addressed in greater detail in Issue 1. In addition, staff is recommending that the Commission correct CWU's territory description set forth in Order No. 11868, which did not correctly reflect the service area requested by CWU. This error is discussed in Issue 3 and the correction is reflected in Attachment B.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order County-Wide Utility Company, Inc. to show cause, in writing within twenty days, why it should not be fined for violation of Section 367.045(2), Florida Statutes?

RECOMMENDATION: No. Show cause proceedings should not be initiated. (CROSBY, REDEMANN)

STAFF ANALYSIS: As stated in the case background, County-Wide Utility Company, Inc. is in apparent violation of Section 367.045, Florida Statutes, which states, in 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 Commission. . . ." CWU has been providing water service to 110 customers outside of its certificated area for some time without obtaining an amended certificate of authorization. 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.

CWU's failure to obtain the approval of the Commission prior to extending its service area appears to be due to the confusion in the original filing and CWU's belief that the territory being served was within its certificated area. The original application filed in Docket No. 810369-WU included incorrect territory descriptions for the Bahia Oaks area, which appear to have been rewritten several times. The Bahia Oaks area is made up of Units One, Two, Three, Four and Five. In its original application, it appears that CWU only requested to serve Bahia Oaks Units One and Two, and indicated that Units Three, Four and Five would be served at a later date. Order No. 11868, issued on April 21, 1983, in Docket No. 810369-WU, granted CWU the authority to serve Bahia Oaks Units One and Two and some adjacent vacant territory. Subsequent to the issuance of Order No. 11868, CWU began serving customers in the other Units in 1990 without obtaining Commission approval

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because of its mistaken belief that all of the Units were in its service area.

Although CWU failed to obtain an amended certificate prior to providing service outside of its service area, staff does not believe that the violation of Section 367.045, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. CWU filed the application for amendment of its service area as soon as it became aware that it was serving outside of its certificated area. Therefore, staff recommends that the Commission not order CWU to show cause for failing to obtain an amended certificate prior to providing service outside of its certificated territory.

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ISSUE 2: Should the application of County-Wide Utility Company, Inc. for amendment of Water Certificate No. 390-W be granted?

RECOMMENDATION: Yes, the application by County-Wide Utility Company, Inc. should be granted for the additional territory described in Attachment A. (REDEMANN)

STAFF ANALYSIS: As stated earlier, on January 17, 1997, the utility applied for an amendment of Water Certificate No. 390-W in Marion County to extend its certificated territory to include territory known as Bahia Oaks Units three, four and five. The utility is already serving a portion of this area. Except as noted in Issue 1, 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 amendment of certificate. 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 a copy of a 99 year lease which provides for the continued use of the land upon which the facilities are located as required by Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(3)(e), (f) and (i), Florida Administrative Code. A description of the water territory is appended to this recommendation as Attachment A. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections have been received and the time for filing such has expired. The local planning agency was provided notice of the application and did not file a protest. Staff has contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation regarding this utility.

CWU has been regulated by the Commission since 1981. As stated earlier, some of the customers in the additional territory are already being served. The water treatment plant consists of two six inch wells that can produce .57 million gallons per day (mgd). The utility believes that at build out the demand will be .435 mgd from the development. The utility contracts out its management services. Environmasters Water and Wastewater Services, Inc. has been operating and maintaining CWU's water system since 1992. The Public Service Commission audited the utility in 1993 and determined that the utility was earning a 7% return on its investment. From the above information, staff believes the utility

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has the financial and technical ability to provide quality service to the customers in the additional area. Staff recommends the rates and charges approved by the Commission be applied to customers in the new service territory.

Based on the above information, staff believes it is in the public interest to grant the application of CWU for amendment of Water Certificate No. 390-W to the additional territory described in Attachment A. The utility has returned the certificates for entry of the additional territory and filed revised tariff sheets which reflect the amended territory description.

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ISSUE 3: Should the correction of territory in Marion County included in Certificate No. 390-W be granted to County-Wide Utility Company, Inc.?

RECOMMENDATION: Yes, the territory description which County-Wide Utility Company, Inc. is authorized to serve by Certificate No. 390-W, should be corrected to reflect the territory description described in Attachment B in this recommendation. (REDEMANN)

STAFF ANALYSIS: The utility became aware in the fall of 1996 that there were discrepancies between its territory description in Order No. 11868, dated April 21, 1983, in Docket No. 810369-W and the area it was actually serving, after reviewing a territory map prepared for Marion County of the certificated utilities in the County. The utility filed an amendment application on January 17, 1997 to correct the problem of serving outside its certificated area.

The utility's original application requested territory that included Units One and Two of the Bahia Oaks Subdivision, but also stated that Units Three, Four and Five would be served at a later date. The territory descriptions were written incorrectly, and several attempts were made by both staff and the utility to rectify these problems. The final product included territory in Units One, Two and some adjacent territory. The utility believed that Units Three, Four and Five were included, and began serving these areas, starting in 1990.

In addition, a small portion of original territory granted to County-Wide is now served by another regulated utility. This area is correctly identified in that utility's service area, and should be deleted from County-Wide's territory.

Based on the above information, staff believes that it is appropriate to approve the correction of territory to County-Wide Utility Company, Inc.'s Water Certificate No. 390-W to include the corrected territory description as described in Attachment B. The utility has returned its certificate to include the corrected territory and filed revised tariff sheets that reflect the corrected territory description.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes, the docket should be closed. (CROSBY)

STAFF ANALYSIS: If the Commission votes in Issue 1 that a show cause proceeding should not be initiated, no other issues remain in the docket and it should be closed.

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ATTACHMENT A

COUNTY-WIDE UTILITY COMPANY, INC.

MARION COUNTY

ADDITIONAL WATER AREA

Township 16 South, Range 21 East, Marion County, Florida

Section 5

The East 3/4 of the South 1/2 of the Southeast 1/4

Section 8

That portion of the Northeast 1/4 lying North and west of State Road 200. Except: Beginning at the intersection of the South boundary of the Northeast 1/4 and the Northerly right-of-way of State Road 200; thence North 89°53'23" West a distance of 1,458.52 feet; thence North 0°00'34" East a distance of 665.08 feet; thence North 89°53'23" East a distance of 1,326.73 feet; thence South 69°21'33" East a distance of 557.40 feet; thence Southwesterly along the Northwestern right-of-way line of State Road 200 to the POINT OF BEGINNING.

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ATTACHMENT B

COUNTY-WIDE UTILITY COMPANY, INC.

MARION COUNTY - WATER SERVICE AREA

ORDER NO. 11868 (CORRECTED)

Township 16 South, Range 21 East, Marion County, Florida

Section 4

The Southwest 1/4

Less and except that portion of the Northeast 1/4 of said Southwest 1/4 of said Section 4 lying North and West of State Road 200

and

Less and except that portion of the Northeast 1/4 of said Southeast 1/4 of the Southwest 1/4 of said Section 4 lying North and West of State Road 200.

Section 9

That portion of the Northwest 1/4, lying North and West of State Road 200.