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FLORIDA PUBLIC SERVICE COMMISSION
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Reporting

MEMORANDUM

APRIL 16, 1998

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

FROM: DIVISION OF WATER & WASTEWATER (REIDMAN) *RF*
 DIVISION OF LEGAL SERVICES (FLEMING) *RF*

RE: DOCKET NO. 971204-WU - APPLICATION FOR AMENDMENT OF
 CERTIFICATE NO. 401-W BY PLACID LAKES UTILITIES, INC.
 COUNTY: HIGHLANDS

AGENDA: APRIL 28, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY
 PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\NAW\WP\971204WU.RC.1

DOCUMENT NUMBER DATE

971204-9 APR 16 98

FILED IN

DOCKET NO. 971204-WU
DATE: APRIL 16, 1998

CASE BACKGROUND

Placid Lakes Utilities, Inc. (Placid Lakes or utility) is a Class B utility which provides water service to approximately 1,263 water customers in Highlands County. Wastewater service is provided by septic tanks. The utility's 1996 annual report shows an annual operating revenue of \$194,663 and a net operating income of \$8,572.

On September 15, 1997, Placid Lakes filed an application for amendment of Certificate No. 401-W to add territory in Highlands County. By Order No. PSC-98-0341-FOF-WU, issued on February 27, 1998, the utility was granted a variance of Rule 25-30.036(3)(e), Florida Administrative Code, which requires utilities to provide territory descriptions of the area to be served using township, range, section and metes and bounds references. There are two separate areas in this amendment application. The utility was allowed variance of Rule 25-30.036(3)(e), Florida Administrative Code for the first area. This area was originally deleted in Docket No. 860532-WU, by Order No. 17372, dated April 7, 1987. The second area is an area the utility has been serving since the Commission took over jurisdiction in the early 1980's, and was inadvertently left out the original territory description. When the utility was revising its tariffs, the utility determined that 44 customers were outside of its certificated area.

As stated above, at the time of the application, the utility was serving 44 customers outside of its certificated area. 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 its certificated area. This issue will be addressed in detail in Issue 1.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Placid Lakes Utilities, 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. (FLEMING, REDEMANN)

STAFF ANALYSIS: At the time of the application, the utility was serving 44 customers outside of its certificated territory. All customers are in the East 1/2 of Section 9, Township 37 South, Range 29 East. Staff first became aware that the utility was serving outside of its certificated area when the utility revised its tariff sheets during the course of this application. The utility indicated that it had been serving this area when the Commission took over jurisdiction in the early 1980's and this area should have been included in its grandfather certificate (Order No. 12954, issued October 10, 1983, in Docket No. 820478-W).

Pursuant to Section 367.045(2), Florida Statutes, a utility may not delete or extend its service area outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the Commission. 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). The utility's failure to obtain antecedent Commission approval to extend its service area outside the area described in its certificate of authorization appears to be willful in the sense intended by Section 367.161, 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

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However, Staff is recommending that no show cause proceeding be initiated for the utility's apparent violation of Section 367.045(2), Florida Statutes. The utility indicates that it has been serving the East 1/2 of Section 9, Township 37 South, Range 29 East, part of the area proposed to be added, since the Commission took over jurisdiction in the early 1980's and that this area should have been included in its grandfather certificate. See Order No. 12954. The utility was under the notion that the entire service area it was serving before the Commission assumed jurisdiction was included in its grandfather certificate. However, it was not until the utility revised its tariff that it determined that 44 customers were outside of the certificated area. The utility acknowledged the problem and noticed this area as part of this application in January, 1998 in an attempt to correct the problem. No objections to the notice of application were received.

In consideration of the foregoing, staff agrees that the area was inadvertently omitted in the original grandfather certificate and does not believe that this utility's violation of Section 367.045(2), Florida Statutes, rises to the level of warranting that a show cause order be issued. Therefore, staff recommends that the Commission not order Placid Lakes to show cause why it should not be fined for apparent violation of Section 367.045(2), Florida Statutes.

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ISSUE 2: Should Placid Lakes' application for amendment of Water Certificate No. 401-W be granted?

RECOMMENDATION: Yes, Placid Lakes' application should be granted for the additional territory described in Attachment A. Placid Lakes should charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. (REDEMANN)

STAFF ANALYSIS: As stated earlier, on September 15, 1997, the utility filed an application for amendment of Certificate No. 401-W to add territory in Highlands County. Except as noted in Issue 1, the application is in compliance with the governing statute, Section 367.045, Florida Statute, and other pertinent statutes and administrative rules concerning an application for an amendment. The application contains a check in the amount of \$1,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The utility has provided a copy of a warranty deed which provides for the continued use of the land 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 area in Attachment A described as Sections 22 and 23 was part of a larger area the Commission removed from the utility's service area by Order No. 17372, issued April 7, 1987, in Docket No. 860532-WU when it was determined that the utility was unable to serve this area due to financial reasons. In addition, Attachment A includes the East 1/2 of Section 9 where the 44 customers are located. The utility has since revised its service availability policy so that it is now able to serve the complete development area. The change in service availability allows the utility to collect a main extension charge, plant capacity charge, and Allowance for Funds Prudently Invested (AFPI) for the water treatment plant. Attachment B includes a composite water territory description. The composite water description includes Orders Nos. 12594, 17372, 22164, PSC-97-1148-FOF-WU and the area at issue in this docket. Although the Commission granted a variance of Rule 25-30.036(3)(e), Florida Administrative Code, which requires the utility to provide a description of the proposed extended area to be served using township, ranges, sections and metes and bounds, the final composite water description is in compliance with the above-mentioned rule. 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.

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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 to the amendment. Staff has contacted the Department of Environmental Protection (DEP) and learned that there are no outstanding notices of violation regarding this utility.

The utility has been in existence since 1970. It was recently the subject of a staff assisted rate case, which has improved its overall financial standing. The facility is operated and maintained by a licensed operator. The water treatment plant, before expansion had a design capacity of 664,000 gallons per day (gpd) and now is currently permitted for 1,104,000 gallons per day (gpd). Current flows are about 250,000 gpd. With this expansion, the utility estimates they can add 1,250 additional water connections. Based on the above information, staff believes that the utility has the financial ability, water capacity and the technical expertise to serve these customers now and in the future.

Placid Lakes' approved rates and some charges were effective June 14, 1996, pursuant to Order No. PSC-96-0679-POF-WS, issued June 14, 1996 in Docket No. 950697-WU, a staff assisted rate case. Placid Lakes' approved meter charge and tap-in charges were effective July 17, 1995, pursuant to Order No. PSC-95-0848-POF-WS, issued July 17, 1995 in Docket No. 950486-WU, a service availability case. Placid Lakes should charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding.

Based on the above information, staff believes it is in the public interest to grant the application of Placid Lakes for amendment of Water Certificate No. 401-W, to add the additional territory described in Attachment A. Attachment B includes the utility's entire service area. The utility has returned the certificate for entry of the additional territory and filed revised tariff sheets which reflect the amended territory description

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, if issue 1 is approved, this docket should be closed. (FLEMING)

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

PLACID LAKES UTILITIES, INC.

HIGHLANDS COUNTY

ADDITIONAL WATER AREA

Township 37 South, Range 29 East

SECTION 9

The East 1/2 of Section 9

SECTION 22

All that portion lying West of Ninth Street as extended; also that portion lying North of Ninth Avenue and West of First Street and extended.

SECTION 23

All that portion lying East of Fourth Street N.E. as extended; also all that portion lying North of Ninth Avenue and East of First Street N.E. As extended. Less and Except Lot 20, Block 270.

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Attachment B
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PLACID LAKES UTILITIES, INC.

HIGHLANDS COUNTY

COMPOSITE WATER TERRITORY DESCRIPTION

The composite water description includes Orders Nos. 12594, 17372, 22164, PSC-97-1148-POF-WU and this area. Order No. 12594 granted Placid Lakes their original territory. Order No. 17372 removed a portion of this territory. Order No. 22164 added additional territory. It should be noted that Order No. 22164 grants area in Section 22, Township 37 South, Range 29 East and in Section 19 of Placid Lakes, a planned community. All of this area is in Section 22, Township 37 South, Range 29 East. Order No. PSC-97-1148-POF-WU granted the area known as Catfish Creek.

TOWNSHIP 37 SOUTH, RANGE 29 EAST

SECTION 9

The East 1/2 of Section 9

SECTION 10

All of said Section 10 lying South and West of Lake June in Winter (also, known as Lake Stearns)

SECTION 11

All of said Section 11 lying South and West of Catfish Creek

SECTION 14

All of said Section 14 lying South and West of Catfish Creek

SECTION 15

The East 1/2 of Section 15

SECTIONS 22. and 23

All of said Sections 22 and 23

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PLACID LAKES UTILITIES, INC.

HIGHLANDS COUNTY

COMPOSITE WATER TERRITORY DESCRIPTION

CATFISH CREEK ROAD

ORDER NO. PSC-97-1148-POF-WU

Township 37 South, Range 29 East in Sections 2 and 11

Commence at the Southeast corner of Section 2, Township 37 South, Range 29 East; thence run North 0°13'0" West along the East Section Line of said Section 2 for a distance of 780.16 feet to the Point of Beginning; thence continue North 0°13'0" West along the East Section Line of said Section 2 for a distance of 962.36 feet; thence run South 83°36'0" West for a distance of 455.19 feet; thence run South 1°38'25" East for a distance of 739.01 feet; thence run South 50°42'2" West for a distance of 1,599.11 feet; thence run South 59°55'57" West for a distance of 1,888.03 feet; thence run South 82°7'25" West for a distance of 1,070.81 feet; thence run South 38°16'10" East for a distance of 310.00 feet; thence run along the arc of a curve to the left having the following elements: (Radius 500.00 feet, Central angle = 8°52'0". Arc length 77.38 feet, Chord length = 77.30 feet, Chord Bearing = South 42°41'44" East), thence run South 47°8'10" East for a distance of 888.54 feet; thence run North 42°51'50" East for a distance of 373.44 feet; thence run North 65°22'58" East for a distance of 470.85 feet; thence run North 80°57'52" East for a distance of 605.70 feet; thence run North 80°58'39" East for a distance of 815.00 feet; thence run South 89°08'52" East for a distance of 130.75 feet; thence run South 88°47'43" East for a distance of 386.18 feet; thence run along the arc of a non-tangential curve to the left having the following elements: (Radius 1,000.00 feet, Central angle = 79°0'52". Arc length 1,379.06 feet, Chord length = 1,272.35 feet, Chord Bearing = North 23°59'16" West); thence run North 54°25'0" East for a distance of 1,704.89 feet to the Point of Beginning, containing 4,135,082 square feet or 94.9284 acres more or less.

FLORIDA PUBLIC SERVICE COMMISSION - RECORDS AND REPORTING



Date 7/1/11
Number of Originals 5 Copies Per Original 1
Requested By [Signature]

Item Presented
Agenda For (Date) _____ Order No. 11131 In Docket No. 11131
Notice of _____ For (Date) _____ In Docket No. _____
Other _____

Special Handling Instructions

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Number	Distributed/Mailed To	Number	Distributed/Mailed To
<u>16</u>	<u>Commission Offices</u>	<u>--</u>	<u>_____</u>
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<u>1</u>	<u>Docket Mailing List - Forged</u>	<u>_____</u>	<u>_____</u>

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Job Number 32 Verified By [Signature]
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