

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment  
of Certificates 136-W and 97-S  
to add territory in Pasco County  
by Aloha Utilities, Inc.

DOCKET NO. 991699-WS  
ORDER NO. PSC-00-0581-FOF-WS  
ISSUED: March 22, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.  
LILA A. JABER

ORDER DECLINING TO INITIATE A SHOW CAUSE PROCEEDING, APPROVING APPLICATION TO AMEND CERTIFICATES 136-W AND 97-S AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Aloha Utilities, Inc. (Aloha or utility), is a class A water and wastewater utility located in Pasco County. The utility consists of two divisions (Aloha Gardens and Seven Springs). Both divisions have water and wastewater systems. At the end of the year 1998, the utility served a total of 11,432 water customers, and 10,892 wastewater customers. According to the utility's 1998 annual report, its total annual revenues were \$5,387,217 and the net operating income was \$351,009.

On November 12, 1999, Aloha applied for an amendment of Certificates Nos. 136-W and 97-S to add territory in Aloha's Seven Springs service area in Pasco County. The proposed territory consists of two developments, the Riviera Development and the Blackwell Development. The Riviera Development has been receiving water service since 1990. According to the application, until a recent review of the exact territorial legal descriptions, Aloha had been under the mistaken impression that the Riviera Development was within its certificated territory. The Blackwell Development has also requested water service from Aloha and the construction of

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the development is imminent. The utility proposes to provide the Blackwell Development with water service as soon as possible.

SHOW CAUSE PROCEEDING

As stated in the case background, Aloha is serving customers outside of its certificated territory. Section 367.045(2), Florida Statutes, 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 the commission."

Section 367.161(1), Florida Statutes, 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, Florida Statutes, or any lawful rule or order of the Commission.

Utilities are charged with the knowledge of our rules and statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, entitled 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., we, 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. 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, in serving outside of its certificated territory without obtaining an amended certificate of authorization, the utility's act appears "willful" in the sense intended by Section 367.161, Florida Statutes.

Although the utility was improperly serving outside its certificated territory in apparent violation of Section 367.045(2), Florida Statutes, the utility states in its application that it erroneously thought that the territory in question was included in its service area. When the error was discovered, the utility filed the instant application to correct the mistake and include the territory in its service area.

We find that the utility's actions do not rise in these circumstances to the level which warrants the initiation of a show

cause proceeding. The utility has now corrected its error and has accurate maps of its service territory. Therefore, Aloha shall not be made to show cause for its apparent violation of Section 367.045(2), Florida Statutes.

#### APPLICATION

As stated above, on November 12, 1999, the utility filed an application for amendment of Certificates Nos. 136-W and 97-S to add territory in Pasco County, pursuant to Rule 25-30.036(3), Florida Administrative Code. Except for its apparent violation of Section 367.045(2), Florida Statutes, 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 \$300, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The utility has provided copies of warranty deeds 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 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 were filed 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. The Department of Community Affairs has identified no growth management concerns with the proposed expansion of the utility in Pasco County. The utility states that the provision of service will be consistent with the utility section of the local comprehensive plan.

The amendment application is for the Riviera Development which has 37 Equivalent Residential Connections (ERCs), and the Blackwell Development which will have 27 ERCs. As mentioned earlier, the Riviera Development has been receiving water service since 1990. The Blackwell Development has also requested water service from

Aloha and the construction of the development is imminent. The utility proposes to provide the Blackwell Development water service as soon as possible. Currently, the Riviera Development is provided wastewater service through individual septic tanks. The present plan for the Blackwell Development is also to provide septic tanks to individual lots. However, the application states there is no other adjacent or available utility in a position to provide wastewater service. If and when a need for central wastewater service is needed, Aloha is in the best position to provide this service.

The Seven Springs Water System consists of 8 well/treatment facilities and one 500,000 gallon ground storage and pumping facility. Water is also obtained through an interconnect with Pasco County Utilities. The system maintains pressure of approximately 52 pounds per square inch. The current limiting factor with regard to the water system is the Southwest Florida Water Management District Water Use Permit capacity of 2.04 million gallons per day. The current flows at the Seven Springs wastewater plant are approximately 1,150,000 gallons per day. The utility is currently building additional plant and effluent disposal. The projected water flows from the additional area is minimal. There appears to be almost no impact on the water and wastewater systems. Therefore, the system has adequate water and wastewater capacity.

According to the utility's tariff and service availability policy, developers of the property will be required to construct all on-site facilities and convey those to the utility at no cost in exchange for service. The developers will also pay the standard system capacity fees to offset a portion of the cost of the transmission, treatment and disposal facilities in order to serve the properties. Consequently, there appears to be little financial impact on the utility, and the utility has demonstrated the financial ability to provide quality service to these customers.

Our staff has contacted the Department of Environmental Protection (DEP) and learned that there are no outstanding notices of violation issued for the water system. We note that we currently have Docket No. 960545-WS open to address a water quality issue. Some residents have been having water quality concerns, and have complained about receiving "black" or "gray" water. We have been advised by DEP that this gray particulate in the water is copper sulfide. Apparently copper sulfide forms when hydrogen sulfide that is naturally occurring in the water reacts with the residents' copper pipes. In the above-mentioned docket, we issued

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Proposed Agency Action Order No. PSC-99-0061-FOF-WS on January 7, 1999, finding that no action should be taken in regards to the quality of water service. However, the order has been protested and the case is set for hearing on March 29-30, 2000.

Our staff has also learned from the DEP that there is an amended and restated consent final judgement (judgement) for the wastewater system. The utility is expanding the wastewater treatment plant, conducting an infiltration/inflow study on the collection system and is in the process of expanding the reuse system. According to the DEP, the utility is on schedule to meet the time frames contained in the judgement.

The approved rates and charges shall be applied to customers in the new service territory. The utility has filed revised tariff sheets incorporating the additional territory into its tariff and returned its certificate for entry reflecting the additional territory.

Based on the above information, we find that it is in the public interest to grant the application of Aloha for amendment of Water Certificate No. 136-W and Wastewater Certificate No. 97-S for the territory described in Attachment A, which is incorporated herein by reference.

No further action is required in this docket, and the docket shall be closed.

Based on the foregoing, it is

ORDERED that no show cause proceeding shall be initiated for Aloha Utilities, Inc.'s apparent violation of Section 367.045(2), Florida Statutes. It is further

ORDERED by the Florida Public Service Commission that Aloha Utilities, Inc.'s application to amend Certificates Nos. 136-W and 97-S to include additional territory is approved. It is further

ORDERED that Certificates Nos. 136-W and 97-S, held by Aloha Utilities, Inc., are amended to include the territory described in Attachment A of this Order, which is incorporated herein by reference. It is further

ORDERED that Aloha Utilities, Inc., shall charge the customers in the territory added herein the rates and charges contained in

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its tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 22nd day of March, 2000.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

RRJ

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 Director, Division of Records and Reporting, 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

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First District Court of Appeal in the case of a water and/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.

ALOHA UTILITIES, INC.

Pasco County - Seven Springs Area

Water and Wastewater Service Area

PARCEL I (BLACKWELL PROPERTY)

THE WEST 1/2 OF THE NORTHWEST 1/4 AND THE NORTHWEST 1/4 OF  
SOUTHWEST 1/4, OF SECTION 33, TOWNSHIP 26 SOUTH, RANGE 16 EAST,  
PASCO COUNTY, FLORIDA, LESS THE FOLLOWING:

DESCRIPTION: AS SURVEYED

THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 AND THE SOUTHWEST 1/4 OF THE  
NORTHWEST 1/4 LYING SOUTH OF THE CENTERLINE OF DUCK SLOUGH ALL  
LYING AND BEING IN SECTION 33, TOWNSHIP 26 SOUTH, RANGE 16 EAST,  
PASCO COUNTY, FLORIDA, EXPLICITLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF THE NORTHWEST 1/4 OF THE  
SOUTHWEST 1/4 OF SAID SECTION 33 FOR A POINT OF BEGINNING THE SAME  
ALSO BEING THE SOUTHWEST CORNER OF LOT 468, OAK RIDGE UNIT THREE,  
AS RECORDED IN PLAT BOOK 17, PAGES 108 THRU 122 OF THE PUBLIC  
RECORDS OF PASCO COUNTY, FLORIDA, THENCE ON THE SOUTH BOUNDARY OF  
AFORESAID NORTHWEST 1/4 OF THE SOUTHWEST 1/4 N89°45'47"W, A  
DISTANCE OF 1324.47 FEET TO THE SOUTHWEST CORNER OF THE NORTHWEST  
1/4 OF THE SOUTHWEST 1/4; THENCE ON THE WEST BOUNDARY OF SAID  
SECTION 33 N00°36'04"E, A DISTANCE OF 1863.15 FEET TO A POINT LYING  
S00°36'04"W, A DISTANCE OF 2124.77 FEET MORE OR LESS FROM THE  
NORTHWEST CORNER OF SAID SECTION 33; THENCE DEPARTING THE WEST  
BOUNDARY OF SECTION 33 S89°44'17"E, A DISTANCE OF 70.32 FEET MORE  
OR LESS TO A POINT ON THE CENTERLINE OF DUCK SLOUGH; THENCE  
MEANDERING ON SAID CENTERLINE OF DUCK SLOUGH THE FOLLOWING 39  
COURSES: (1) S62°13'16"E, A DISTANCE OF 33.69 FEET; (2) THENCE  
S19°43'52"E, A DISTANCE OF 33.69 FEET; (3) THENCE S38°27'55"E, A  
DISTANCE OF 59.34 FEET; (4) THENCE S85°45'19"E, A DISTANCE OF 47.77  
FEET; (5) THENCE N47°22'22"E, A DISTANCE OF 45.33 FEET; (6) THENCE  
N19°03'27"E, A DISTANCE OF 24.43 FEET; (7) THENCE N07°32'05"E, A  
DISTANCE OF 50.01 FEET; (8) THENCE N30°22'54"E, A DISTANCE OF 38.14  
FEET; (9) THENCE N51°49'22"E, A DISTANCE OF 25.92 FEET; (10) THENCE  
S67°01'12"E, A DISTANCE OF 17.32 FEET; (11) THENCE S46°00'30"E, A  
DISTANCE OF 104.61 FEET; (12) THENCE S59°51'49"E, A DISTANCE OF

128.83 FEET; (13) THENCE S50°15'41"E, A DISTANCE OF 25.07 FEET; (14) THENCE S81°07'53"E, A DISTANCE OF 30.62 FEET; (15) THENCE S34°41'17"E, A DISTANCE OF 101.93 FEET; (16) THENCE S74°49'07"E, A DISTANCE OF 33.80 FEET; (17) THENCE S29°57'09"E, A DISTANCE OF 44.68 FEET; (18) THENCE N44°16'42"E, A DISTANCE OF 87.91 FEET; (19) THENCE N58°41'18"E, A DISTANCE OF 75.04 FEET; (20) THENCE N36°20'41"E, A DISTANCE OF 80.01 FEET; (21) THENCE N48°01'15"E, A DISTANCE OF 25.29 FEET; (22) THENCE N67°23'56"E, A DISTANCE OF 25.44 FEET; (23) THENCE N53°59'34"E, A DISTANCE OF 30.35 FEET; (24) THENCE S72°31'00"E, A DISTANCE OF 21.95 FEET; (25) THENCE S38°33'21"E, A DISTANCE OF 75.36 FEET; (26) THENCE S48°50'51"E, A DISTANCE OF 50.08 FEET; (27) THENCE S67°52'04"E, A DISTANCE OF 61.04 FEET; (28) THENCE S85°21'41"E, A DISTANCE OF 22.66 FEET; (29) THENCE N67°29'06"E, A DISTANCE OF 25.10 FEET; (30) THENCE N36°36'53"E, A DISTANCE OF 15.47 FEET; (31) THENCE N42°55'34"E, A DISTANCE OF 13.55 FEET; (32) THENCE N64°40'37"E, A DISTANCE OF 16.53 FEET; THENCE N80°12'54"E, A DISTANCE OF 21.53 FEET; (33) THENCE N88°39'04"E, A DISTANCE OF 25.02 FEET; (34) THENCE S77°02'33"E, A DISTANCE OF 25.58 FEET; (35) THENCE S64°26'29"E, A DISTANCE OF 14.58 FEET; (36) THENCE S76°53'29"E, A DISTANCE OF 12.06 FEET; (37) THENCE S84°29'38"E, A DISTANCE OF 64.09 FEET; (38) THENCE S53°49'52"E, A DISTANCE OF 13.67 FEET; (39) THENCE S86°31'15"E, A DISTANCE OF 22.94 FEET TO THE POINT OF INTERSECTION OF THE CENTERLINE OF DUCK SLOUGH AND THE EAST BOUNDARY OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 33 SAID POINT ALSO BEING A POINT ON THE WEST BOUNDARY OF AFORESAID OAK RIDGE UNIT THREE; THENCE ON THE EAST BOUNDARY OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 33 THE SAME BEING THE WEST BOUNDARY OF SAID OAK RIDGE UNIT THREE S00°25'38"W, A DISTANCE OF 401.36 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4; THENCE S00°40'36"W (N00°40'03"E PER THE PLAT OF OAK RIDGE UNIT THREE), A DISTANCE OF 1326.10 FEET TO THE POINT OF BEGINNING; CONTAINING 53.95 ACRES, MORE OR LESS.

PARCEL II (RIVIERA PROPERTY)

THAT PART OF THE SOUTH 7/8 OF THE SOUTH 1/2 OF SECTION 32, TOWNSHIP 26 SOUTH, RANGE 16 EAST, PASCO COUNTY, FLORIDA, LYING EAST OF THE ANCLOTE RIVER AND THAT PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 26 SOUTH, RANGE 16 EAST, PASCO COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 32 FOR A POINT OF BEGINNING AND THENCE RUN SOUTH 89°57'44" WEST ALONG THE SOUTH BOUNDARY OF SAID SECTION 32 FOR 1227.01 FEET TO THE EAST BANK OF THE ANCLOTE RIVER, ALSO BEING THE MEAN HIGH WATER LINE; THENCE, ALONG THE SAID EAST BANK OF THE ANCLOTE RIVER ALONG THE FOLLOWING 26 CALLS: NORTH 51°58'57" EAST, 11.97 FEET; THENCE NORTH 51°58'58" EAST, 78.86 FEET; THENCE NORTH 54°41'19" EAST, 91.24 FEET; THENCE NORTH 54°18'18" EAST, 50.67 FEET; THENCE NORTH 42°04'01" EAST, 64.01 FEET; THENCE NORTH 57°27'30" EAST, 75.66 FEET; THENCE NORTH 53°17'50" EAST, 50.09 FEET; THENCE NORTH 57°50'00" EAST 50.49 FEET; THENCE NORTH 48°43'04" EAST, 50.01 FEET; THENCE NORTH 52°09'15" EAST 50.04 FEET; THENCE NORTH 56°42'23" EAST, 50.36 FEET; THENCE NORTH 52°09'15" EAST 50.04 FEET; THENCE NORTH 58°40'55" EAST, 65.23 FEET; THENCE NORTH 45°37'53" EAST, 40.65 FEET; THENCE SOUTH 74°38'42" EAST, 38.83 FEET; THENCE NORTH 86°57'20" EAST, 24.80 FEET; THENCE NORTH 66°24'53" EAST, 33.03 FEET; THENCE NORTH 36°06'44" EAST, 40.50 FEET; THENCE NORTH 33°37'55" EAST, 26.25 FEET; THENCE NORTH 13°26'00" EAST, 35.03 FEET; THENCE NORTH 17°26'58" EAST, 55.02 FEET; THENCE NORTH 20°39'03" EAST, 24.08 FEET; THENCE NORTH 08°44'04" WEST, 65.81 FEET; THENCE NORTH 08°36'23" WEST, 52.52 FEET; THENCE NORTH 19°41'18" WEST, 34.70 FEET; THENCE NORTH 06°13'19" WEST, 13.53 FEET; THENCE LEAVING SAID EAST BANK OF THE ANCLOTE RIVER AND CONTINUING ALONG THE SAID MEAN HIGH WATER LINE SOUTH 47°29'58" EAST, 7.02 FEET; THENCE SOUTH 40°52'42" EAST, 12.02 FEET; THENCE SOUTH 65°47'06" EAST, 18.24 FEET; THENCE SOUTH 86°12'32" EAST 37.28 FEET; THENCE NORTH 86°34'03" EAST, 18.88 FEET; THENCE NORTH 77°06'26" EAST, 35.87 FEET; THENCE SOUTH 89°52'14" EAST ALONG A LINE PARALLEL WITH THE SOUTH BOUNDARY OF THE SOUTHWEST 1/4 OF SAID SECTION 33 FOR 360.63 FEET TO THE EAST BOUNDARY OF SAID SECTION 32; THENCE CONTINUING SOUTH 89°52'14" EAST, 1323.39 FEET TO THE EAST BOUNDARY OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 33; THENCE SOUTH 00°40'03" WEST, ALONG THE EAST BOUNDARY OF THE SAID SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 FOR 784.08 FEET; THENCE NORTH 89°52'12" WEST ALONG THE SOUTH BOUNDARY OF SAID SECTION 33 FOR 1321.78 FEET TO THE POINT OF BEGINNING.

CONTAINING 37.102 ACRES OR 1616163.120 SQUARE FT. MORE OR LESS.