

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: JANUARY 22, 2004

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (REDEMANN)
OFFICE OF THE GENERAL COUNSEL (Vining) *RRR* *see Paul* *1/22/04*

RE: DOCKET NO. 030957-SU - APPLICATION FOR AMENDMENT OF CERTIFICATE NO. 379-S FOR EXTENSION OF WASTEWATER SERVICE AREA IN SEMINOLE COUNTY, BY ALAFAYA UTILITIES, INC.
COUNTY: SEMINOLE

AGENDA: 02/03/2004 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\030957.RCM

CASE BACKGROUND

Alafaya Utilities, Inc. (Alafaya or utility) is a Class A wastewater utility with its head quarters located in Altamonte Springs, Florida. Alafaya provides wastewater and reuse service in Seminole County. Water is provided by the City of Oviedo. The area subject to this amendment is in the St. Johns River Water Management District, which has declared its entire district as a water use caution area.

Utilities, Inc. is the parent company of Alafaya. Utilities, Inc. provides water and/or wastewater service in Florida through about nineteen separate companies. Alafaya serves about 5,676 residential and 92 general service wastewater customers as well as 55 residential and one general service reuse customers. For the year ended December 31, 2002, the utility reported wastewater operating revenues of \$1,912,970, and a net operating income of \$308,915.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

During staff's investigation in Docket No. 020408-SU, In re: Application for Rate Increase in Seminole County by Alafaya Utilities, Inc., the map provided by the utility indicated that there was one customer, the Oviedo Presbyterian Church, that was outside the utility's service area. On April 8, 2003, the utility indicated that they would file an amendment application to correct the problem by October 1, 2003.

This recommendation addresses a show cause for serving outside its certificated area and an amendment. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Alafaya Utilities, Inc. to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Section 367.045(2), Florida Statutes?

RECOMMENDATION: No. Show cause proceedings should not be initiated. (VINING)

STAFF ANALYSIS: The utility is currently serving one customer outside of its certificated territory, the Oviedo Presbyterian Church. The connection to the church was made sometime between December 1, 1994, and February 21, 1995. The utility is not certain of the time frame because at that point in time the purchase of the system by the current owners was being finalized. The utility believes that service to the church was either overlooked, or was anticipated by the previous owners. In any event, the amendment to the service territory was never accomplished. As a result, Alafaya is in apparent violation of Section 367.045(2), Florida Statutes.

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, Florida Administrative Code, 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.

In this instance, staff is recommending that no show cause proceedings be initiated for the utility's apparent violation of Section 367.045(2), Florida Statutes. It appears that since the service to the church began around the same time that the utility was sold, the new owners simply overlooked the service outside of its certificated territory, possibly because the previous owners actually authorized the church's connection, and failed to file an amendment application.

In consideration of the foregoing, staff does not believe that the utility's apparent violation of Section 367.045(2), Florida Statutes, rises to a level warranting the initiation of show cause proceedings. Therefore, staff recommends that the Commission not order Alafaya to show cause why it should not be fined for failing to obtain the Commission's approval to extend its service area prior to serving that area.

ISSUE 2: Should Alafaya's application to amend Certificate No. 379-S be granted?

RECOMMENDATION: Yes, Alafaya's amendment application to expand its territory should be granted. The proposed territory amendment is described in Attachment A. Alafaya 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: On October 1, 2003, Alafaya filed an application for amendment to include the Oviedo Presbyterian Church. 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 \$100, 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 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. The local planning agency was provided notice of the application and did not file a protest to the amendment. No objections were filed and the time for filing such has expired. The Department of Community Affairs has identified no growth management concerns with the proposed expansion of the utility. The utility states that the provision of service will be consistent with the utility section of the local comprehensive plan.

The Alafaya wastewater treatment plant consists of two 1.2 million gallons per day (mgd) Annual Average Daily Flow (AADF) extended aeration treatment plants operating in parallel with three common influent surge tanks with manual screening and grit removal,

aeration, secondary clarification, and chlorination with a splitter box side stream from each plant. The effluent either goes to the 1.0 mgd cloth filter and chlorination system for public reuse or is chlorinated and sent to the percolation/evaporation ponds. The utility has sufficient capacity to serve this customer. Staff has contacted the Department of Environmental Protection for this system and learned that there are no outstanding notices of violation issued. The utility utilizes licensed operators to operate the system.

Regarding the financial impact of this customer to the utility, the customer is already being served; therefore, this extension is not expected to have any impact on the rates or service availability charges.

Consequently, staff believes the utility has demonstrated the financial and technical ability to provide quality service to this customer. Staff recommends the rates and charges approved by the Commission 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, staff recommends that Alafaya's amendment application to expand its territory should be granted. The proposed territory amendment is described in Attachment A. Alafaya 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.

DOCKET NO. 030957-SU
DATE: January 22, 2004

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, no further action is required and the docket should be closed after the time for filing an appeal has run.
(VINING)

STAFF ANALYSIS: No further action is required and the docket should be closed after the time for filing an appeal has run.

Alafaya Utilities, Inc.

Wastewater Service Area

Serving the Oviedo Presbyterian Church

Seminole County

Commence at the Northeast corner of the Northwest 1/4 of Section 25, Township 21 South, Range 31 East, Seminole County, Florida; thence run West, a distance of 668 feet; thence South, a distance of 1,280 feet to the POINT OF BEGINNING; thence South 49° East, a distance of 436 feet; thence South 34° West, a distance of 704 feet; thence North 50° West, a distance of 424 feet; thence North 35° East, a distance of 279 feet; thence North 14° East, a distance of 257 feet; thence North 56° East, a distance of 208 feet to the POINT OF BEGINNING.