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Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 17, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Rieger) *SAR* *RD*
Office of the General Counsel (Hartman) *MSB* *190*

RE: Docket No. 080342-WS – Application for amendment of Certificates 352-W and 308-S to extend water and wastewater service areas to include certain land in Martin County, by Miles Grant Water and Sewer Company.

AGENDA: 09/29/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080342.RCM.DOC

Case Background

On June 19, 2008, Miles Grant Water and Sewer Company (Miles Grant or utility) filed an application with the Commission to amend Certificate Nos. 352-W and 308-S to add water and wastewater territory to its service area in Martin County, pursuant to section 367.045(2), Florida Statutes. Miles Grant is a Class B utility which provides water and wastewater service to approximately 1,327 water and 1,058 wastewater customers. The utility's 2007 annual report shows combined water and wastewater annual operating revenues of \$606,483, and a net income loss of \$14,762. The utility is in the South Florida Water Management District.

This application was filed in response to a recent review of the utility's service territory which revealed that the utility is currently providing service to approximately 85 water

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connections and 66 wastewater connections located outside its certificated territory. The areas to be amended are made up of two parcels that are located adjacent to the utility's existing certificated water and wastewater service areas. In addition to the existing connections in the amended areas, the proposed territory will also have the potential to accommodate an additional eight water connections. There is currently an active rate case (Docket No. 070695-WS) pending with the Commission, which will be considered at the October 28, 2008 agenda conference. The Commission has jurisdiction for the amendment application pursuant to section 367.045, Florida Statutes.

Discussion of Issues

Issue 1: Should Miles Grant Water and Sewer Company be required to show cause, in writing, within 21 days why it should not be fined for its apparent violation of Section 367.045, Florida Statutes?

Recommendation: No. A show cause proceeding should not be initiated. (Hartman)

Staff Analysis: The utility provides service to two different areas outside of its authorized territory. Service to these residential areas began in the late 1980's. The utility indicated that for some unknown reason, the requirement to file a petition for certificate amendments to serve one of these areas, a newly developed subdivision, was inadvertently overlooked. This was most likely as a result of its involvement in several other dockets before the Commission at that time. In the other area of concern, the utility originally believed that it already included this area in the utility's service territory.

Miles Grant has been serving water and wastewater customers outside of its certificated area. 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 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 serving outside of its certificated territory without obtaining an amended certificate of authorization, the utility's act was "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 "in 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

Although Miles Grant's failure to obtain Commission approval prior to serving outside of its certificated service area appears to be in violation of Section 367.045(2), Florida Statutes, there are circumstances which appear to mitigate the utility's actions. The customers that Miles Grant is serving outside of its territory are adjacent to its service area. When these customers were connected (some over twenty-five years ago), Miles Grant had either inadvertently overlooked amending the areas involved, or had simply assumed that the territory was already sufficient to accommodate the new connections. In addition, Miles Grant has paid all the necessary regulatory assessment fees (RAFs) for the additional areas. Furthermore, upon becoming aware that the areas were not located within its certificated territory, the utility, without delay, filed an application for amendment of its certificates to include the additional areas.

Staff does not believe that the apparent violation of Section 367.045, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause

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proceeding. Therefore, staff recommends that the Commission not order Miles Grant to show cause for failing to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

Issue 2: Should the Commission approve Miles Grant's application for amendment of Certificates 352-W and 308-S?

Recommendation: Yes. The Commission should approve Miles Grant's application for amendment of Certificates 352-W and 308-S to include territory as reflected in Attachment A. The resultant order should serve as Mile Grant's amended certificates and should be retained by the utility. The utility should charge the customers in the territory added herein the rates and charges contained in its current tariff until authorized to change by the Commission. (Rieger, Hartman)

Staff Analysis: This application is in compliance with the governing statute, Section 367.045, Florida Statutes, and Rule 25-30.036, Florida Administrative Code. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code.

Staff believes that the utility has demonstrated its ability to serve the proposed extended areas and that it has the necessary financial and technical expertise to do so. In addition, the utility has indicated that its current water and wastewater systems have sufficient capacity to serve the proposed area that includes both the existing, and the eight future connections mentioned earlier.

The utility also provided verification of a deed to the water and wastewater treatment plant sites. Adequate service territory maps and territory descriptions have also been provided. No objections to the application have been received and the time for filing such has expired. Service to the proposed areas began in the late 1980's. Until recently, the utility had assumed that the proposed areas had always been within the certificated areas authorized by the Commission. The utility has indicated that throughout this time period, the calculation of the annual RAFs for Miles Grant was inclusive of all of these customers.

Based on the foregoing, staff believes it is in the public interest to approve the application filed by Miles Grant to amend its territory to reflect the area described in Attachment A. Composite territory descriptions which reflect the combined existing and amended areas are also included in Attachment A. The resultant order should serve as Miles Grant's amended certificates and should be retained by the utility. The utility should charge the customers in the territory added herein the rates and charges contained in the current tariff until authorized to change by the Commission.

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Issue 3: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendations in Issue 1 and Issue 2, no further action will be necessary and this docket should be closed. (Hartman)

Staff Analysis: If the Commission approves staff's recommendations in Issue 1 and Issue 2, no further action will be necessary and this docket should be closed.

MILES GRANT WATER AND SEWER COMPANY
DESCRIPTION OF TERRITORY ADDED

WATER:

Township 38 South, Range 42 East

Section 30

1
Commence at the Northeast corner of Section 30 and run S 65° 46' 53" W a distance of 3,482.72 feet to the point of beginning of amended area 1, thence run S 23° 41' 0" E a distance of 1,125.72 feet, thence run S 66° 18' 26" W a distance of 1,267.00 feet, thence run N 0° 10' 50" E a distance of 1,223.24 feet, thence run N 65° 46' 39" E a distance of 772.15 feet to the point of beginning of amended area 1.

Section 49

2
Commence at the Northeast corner of Section 50 and run S 65° 59' 54" W a distance of 1,008.72 feet, to the point of beginning of amended area 2, thence run S 65° 28' 48" W a distance of 1,516.54 feet, thence run N 24° 19' 28" W a distance of 255.90 feet, thence run N 66° 20' 24" E a distance of 209.41 feet, thence run S 24° 24' 44" E a distance of 77.82 feet, thence run N 65° 36' 13" E a distance of 849.83 feet, thence run N 24° 19' 49" W a distance of 191.62 feet, thence run N 65° 25' 52" E a distance of 203.15 feet, thence run N 24° 13' 50" W a distance of 166.12 feet, thence run N 65° 00' 15" E a distance of 251.41 feet, thence run S 24° 32' 43" E a distance of 533.09 feet to the point of beginning of amended area 2.

3
Commence at the Northeast corner of section 50 and run N 05° 34' 25" E a distance of 575.36 feet to the point of beginning of amended area 3 being located on the shoreline of the Intercoastal Waterway, thence run S 65° 16' 46" W a distance of 543.25, thence run N 24° 30' 13" W a distance of 550.97 feet, thence run N 65° 22' 32" E a distance of 193.11 feet, thence run N 24° 13' 05" W a distance of 78.84 feet, thence run N 53° 44' 51" W a distance 108.55 feet, thence run N 65° 55' 31" E a distance of 164.28 feet to a point located on the shoreline of the Intercoastal Waterway, thence meander southerly along the shore of the Intercoastal Waterway a distance of 1,090.67 feet more or less to the point of beginning of amended area 3.

MILES GRANT WATER AND SEWER COMPANY
DESCRIPTION OF TERRITORY ADDED

WASTEWATER:

Township 38 South, Range 42 East

Section 30

Commence at the Northeast corner of Section 30 and run S 65° 46' 53" W a distance of 3,482.72 feet to the point of beginning, thence run S 23° 41' 0" E a distance of 1,125.72 feet, thence run S 66° 18' 26" W a distance of 1,267.00 feet, thence run N 0°10'50" E a distance of 1,223.24 feet, thence run N 65° 46' 39" E a distance of 772.15 feet to the point of beginning.

MILES GRANT WATER AND SEWER COMPANY
DESCRIPTION OF WATER TERRITORY

Township 38 South, Range 42 East

Sections 20, 30, 49, & 50

Commence at the Northwest corner of section 20 and run N 65° 47' 31" E more or less a distance of 499.71 feet to the point of beginning which is located on the shoreline of the Intercoastal Waterway(Great Pocket), thence meander Southerly a distance of 1,265.32 feet more or less along said shoreline to a point located on the Southeast corner of government lot 6 also bearing S 12° 57' 15" E a distance of 1,122.91 feet from the point of beginning, thence run S 65° 31' 41" W a distance of 3,911.47 feet, thence run S 66° 18' 26" W a distance of 1,267.00 feet, thence run N0° 10' 50" E a distance of 1,223.24 feet, thence run S 65° 46' 39" W a distance of 1,886.83 feet, thence run N 19° 0' 33" W a distance of 45.28 feet, thence run N 24° 16' 0" W a distance of 645.61 feet, thence run N 1° 31'13" W a distance of 30.72 feet, thence run N 66° 0' 42" E a distance of 934.40 feet, thence run N 24° 20' 0" W a distance of 428.30 feet, thence run N 65° 55' 2" E a distance of 916.69 feet, thence run N 24° 08' 46" W a distance of 479.53 feet to a point located on the North boundary line of Section 50, thence run N 65° 28' 48" E a distance of 1,724.10 feet, thence run N 24° 19' 28" W a distance of 255.90 feet, thence run N 66° 20' 24" E a distance of 209.41 feet, thence run S 24° 24' 44" E a distance of 77.82 feet, thence run N 65° 36' 13" E a distance of 849.83 feet, thence run N 24° 19' 49" W a distance of 191.62 feet, thence run N 65° 25' 52" E a distance of 203.15 feet, thence run N 24° 13' 50" W a distance of 166.12 feet, thence run N 65° 0' 15" E a distance of 251.41 feet, thence run N 65° 24' 11" E a distance of 658.41 feet, thence run N 24° 30' 13" W a distance of 550.97 feet, thence run N 65° 22' 32" E a distance of 193.11 feet, thence run N 24° 13' 05" W a distance of 78.84 feet, thence run N 53° 44' 51" W a distance of 108.55 feet, thence run N 65° 55' 31" E a distance of 164.28 feet to a point located on the shoreline of the Intercoastal Waterway, thence meander Southerly a distance of 4,777.04 feet more or less along said shoreline to the point of beginning.

MILES GRANT WATER AND SEWER COMPANY
DESCRIPTION OF WASTEWATER TERRITORY

Township 38 South, Range 42 East

Sections 20, 30 & 50

Commence at the Northwest corner of section 20 and run N 65° 47' 31" E more or less a distance of 499.71 feet to the point of beginning which is located on the shoreline of the Intercoastal Waterway(Great Pocket), thence meander Southerly a distance of 1,265.32 feet more or less along said shoreline to a point located on the Southeast corner of government lot 6 also bearing S 12° 57' 15" E a distance of 1,122.91 feet from the point of beginning, thence run S 65° 31' 41" W a distance of 3,911.47 feet, thence run S 66°18' 26" W a distance of 1,267.00 feet, thence run N 0° 10' 50" E a distance of 1,223.24 feet, thence run S 65° 46' 39" W a distance of 1,886.83 feet, thence run N 19° 0' 33" W a distance of 45.28 feet, thence run N 24° 16' 0" W a distance of 645.61 feet, thence run N 01° 31' 13" W a distance of 30.72 feet, thence run N 66° 0' 42" E a distance of 934.40 feet, thence run N 24° 20' 0" W a distance of 428.30 feet, thence run N 65° 55' 02" E a distance of 916.69 feet, thence run N 24° 08' 46" W a distance of 479.53 feet to a point located on the North boundary line of Section 50, thence run N 65° 35' 44" E along said boundary line a distance of 4,288.92 feet to a point located on the shoreline of the Intercoastal Waterway, thence meander southeasterly a distance of 2,280.61 feet more or less along said shoreline to the point of beginning.

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

Miles Grant Water and Sewer Company

Pursuant to

Certificate Number 308-S

to provide water service in Martin County in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
11039	07/30/82	810017-WS	Grandfather Certificate
14548	07/08/85	850017-WS	Transfer of Majority Control
PSC-06-0094-FOF-WS	02/09/06	050499-WS	Transfer of Majority Control
*	*	080342-WS	Amendment

***Order Number and date to be provided at time of issuance.**

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

Miles Grant Water and Sewer Company

Pursuant to

Certificate Number 352-W

to provide water service in Martin County in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
11039	07/30/82	810017-WS	Grandfather Certificate
14548	07/08/85	850017-WS	Transfer of Majority Control
PSC-06-0094-FOF-WS	02/09/06	050499-WS	Transfer of Majority Control
*	*	080342-WS	Amendment

***Order Number and date to be provided at time of issuance.**