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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: March 26, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Rieger)
Office of the General Counsel (Klancke)

Handwritten initials: SDR, JSB, CW, and others.

RE: Docket No. 080538-WU – Application for quick-take amendment and application for amendment of Certificate No. 238-W to extend water service to certain territory (Tomoka) in Volusia County, by Aqua Utilities Florida, Inc.
County: Volusia

AGENDA: 04/07/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Place in consecutive order on the agenda.

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080538.RCM.DOC

Case Background

Aqua Utilities Florida, Inc. (Aqua or Utility) is a Class A water and wastewater utility with 82 water and wastewater systems located in sixteen counties throughout Florida. By Order No. 5397, issued May 5, 1972, the Commission granted a water certificate for the Tomoka service area.¹ There has also been multiple certificate transfer and amendment activities that have occurred over the years (see Attachment A, page 3 of 3). On August 12, 2008, the Utility filed both its initial application and completed follow-up application for a “Quick Take”

¹ In Docket No. 71583-W, In re: Application of Tomoka Water Works, Inc., for a certificate to operate existing water systems in Volusia County.

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amendment to Certificate 238-W for certain territory at its Tomoka system in Volusia County, pursuant to Rule 25-30.036(2), Florida Administrative Code (F.A.C.). The Utility provides water service to approximately 261 customers at its Tomoka system. The Utility is in the St. Johns River Water Management District. Twelve of the customers currently being served by Aqua were recently determined to be outside of Aqua's service territory. The Utility has indicated that service to these residential customers began sometime between 1988 and 2001. The Utility has asserted that a petition for certificate amendments to serve these customers was inadvertently overlooked.

The Utility determined that it was serving outside of its certificated area during the pendency of Aqua's 2006 rate case in Docket No. 060368-WS. Shortly after the Utility obtained notice that it was serving outside of its territory, Aqua filed this application for quick-take amendment and application for amendment of Certificate No. 238-W to include those customers that it is already serving. The proposed amended area is contiguous to Aqua's existing Commission approved service territory.

Both the City of Ormond Beach and the County of Volusia submitted separate letters of objection to the Utility's application. Due to the Utility's efforts to address the City's and County's concerns, the objections submitted by the City of Ormond Beach and the County of Volusia have been addressed. On October 22, 2008, the City withdrew its letter of objection. The County of Volusia has also indicated that it no longer wishes to pursue an objection in this docket.

This recommendation addresses the Utility's application for quick-take amendment and application for amendment of Certificate No. 238-W to extend water service to certain territory in Volusia County. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes (F.S.).

Discussion of Issues

Issue 1 Should Aqua Utilities Florida, Inc. 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. (Klancke)

Staff Analysis As stated in the case background, Aqua is serving customers outside of its certificated territory. Section 367.045(2), F.S., states in pertinent 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 [C]ommission" If a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, F.S., Section 367.161(2), F.S. authorizes the Commission to assess a penalty of not more than \$5,000 for each offense. By serving customers outside of its certificated territory without obtaining an amended certificate of authorization, the Utility's act was "willful" within the meaning of Section 367.161, F.S. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, 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;" see also Order No. PSC-99-2390-FOF-WU, issued on December 7, 1999, in Docket No. 980543-WU, In Re: Application for amendment of Certificate No. 363-W to add territory in Marion County by Sunshine Utilities of Central Florida, Inc. (finding that the utility's apparent violation of Section 367.045, F.S., did not warrant the initiation of a show cause proceeding).

Although Aqua's failure to obtain an amended certificate of authorization for its Tomoka system in Volusia County from the Commission prior to serving outside of its certificated area is an apparent violation of Section 367.045(2), F.S., according to its application, the Utility erroneously believed that the territory in question was included in its service area. When the error was discovered, Aqua filed the instant application to correct the mistake and include the territory to its service area. The Utility has indicated that throughout this time period, the calculation of the annual regulatory assessment fees (RAFs) for Aqua was inclusive of all these customers.

Staff does not believe that the apparent violation of Section 367.045, F.S., rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Aqua to show cause for failure to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

Issue 2: Should the Commission acknowledge Aqua's "Quick Take" application to amend Certificate 238-W?

Recommendation: Yes, the Commission should acknowledge Aqua's amendment application to expand its territory. The proposed territory is described in Attachment A. The resultant order should serve as Aqua's amended certificate and it should be retained by the Utility. The existing charges contained in its tariff should be applied to the customers in the new territory until it is authorized by the Commission to change them in a subsequent proceeding. In addition, the Utility should be ordered to file revised tariff sheets that incorporate the additional territory within 30 days from the date of the Commission order approving the amendment. (Rieger, Klancke)

Staff Analysis: The "Quick Take" amendment is designed to provide water and/or wastewater service quickly for areas that serve less than 25 Equivalent Residential Connections (ERCs). The request for service territory expansion and amendment of existing certificates is considered approved when the Utility complies with Rule 25-30.036(2), F.A.C., and if no protest is timely filed to the notice of application.

On August 12, 2008, the Utility filed both its initial application and completed follow-up application for a "Quick Take" amendment to Certificate 238-W for new territory in Volusia County, pursuant to Rule 25-30.036(2), F.A.C. The proposed territory will include 12 residential customers. The Utility has indicated that service to these residential customers occurred sometime between 1988 and 2001. The application is in compliance with the governing statute, Section 367.045, F.S., and other pertinent statutes and administrative rules concerning an application for amendment of certificate.

Staff has contacted the Volusia County Health Department and learned that there are no outstanding notices of violation issued for Aqua's Tomoka water treatment facility. It appears that the Utility has sufficient capacity to serve the existing and proposed customers. A description of the proposed territory and a list of orders identifying the Utility's authorized service territory are appended to this recommendation as Attachment A. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.036(2), F.A.C. As mentioned in the case background, the City of Ormond Beach and the County of Volusia filed protests to the application that have since been resolved. No other objections to the application have been received and the time for filing such has expired. The Utility has filed revised tariff sheets incorporating the additional territory into its tariff. However, these tariff sheets are still incomplete, and further revision is necessary.

Based on the above information, staff believes it is in the public interest to acknowledge the "Quick Take" amendment application filed by Aqua to amend its territory to reflect the area described in Attachment A. Also, existing charges contained in Aqua's tariff should be applied to the customers in the new service territory until it is authorized by the Commission to change them in a subsequent proceeding. The Utility has indicated that throughout this time period, the calculation of the annual regulatory assessment fees (RAFs) for Aqua was inclusive of all these customers. In addition, the Utility should be ordered to file revised tariff sheets that incorporate the additional territory within 30 days from the date of the Commission order approving the amendment.

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Issue 3: Should this docket be closed?

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

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

Aqua Utilities Florida, Inc.
Volusia County
Description of Water Territory Added

Tomoka View

Township 14 South, Range 32 East

Commence From The Northwest Corner Of Section 30 And Run 2,676.4 Ft S31°14'10"E To The Point Of Beginning, Thence Run N88°21'16"E A Distance Of 743.1 Ft, Thence Run S34°36'56"W A Distance Of 249.9 Ft, Thence Run S88°30'19"W A Distance Of 115.0 Ft, Thence Run S1°13'5"W A Distance Of 166.0 Feet, Thence Run S89°29'49"W A Distance Of 479.3 Ft, Thence Run N0°34'26"W A Distance Of 357.5 Ft To The Point Of Beginning.

Aqua Utilities Florida, Inc.
Volusia County
Composite Water Service Area

Tomoka View

Township 14 South, Range 32 East

Commence From The Northwest Corner Of Section 30 And Run 2,989.4 Ft S27°42'54"E To The Point Of Beginning, Thence Run N0°34'26"W A Distance Of 357.3 Ft, Thence Run N0°54'2"W A Distance Of 2,119.0 Ft, Thence Run N31°1'35"E A Distance Of 155.2 Ft, Thence Run N89°03'29"E A Distance Of 1,095.2 Ft, Thence Run S7°13'23"E A Distance Of 998.9 Ft, Thence Run S49°17'27"E A Distance Of 616.4 Ft, Thence Run S42°17'37"W A Distance Of 277.1 Ft, Thence Run S35°25'38"W A Distance Of 778.4 Feet, Thence Run S87°23'57"W A Distance Of 354.4 Feet, Thence Run S34°36'56"W A Distance Of 249.9 Feet, Thence Run S88°30'19"W A Distance Of 115.0' Feet, Thence Run S01°13'05"W A Distance Of 166.0 Feet, Thence Run S89°29'49"W A Distance Of 479.3 Feet To The Point Of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Aqua Utilities Florida, Inc.
pursuant to
Certificate No. 238-W

to provide water service in Volusia County in accordance with the provisions of Chapter 367, Florida Statutes, and 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>
5397	05/02/72	71583-W	Original Certificate
5397-A	03/21/73	71583-W	Correction
8318	05/22/78	770282-WS (AP)	Original Certificate
20869	03/09/89	880605-WS	Transfer
PSC-93-1449-FOF-WS	10/04/93	930153-WS	Amendment
PSC-97-0427-FOF-WS	04/16/97	970028-WS	Name Change
PSC-00-1659-PAA-WU	09/18/00	000334-WU	Transfer
PSC-05-1242-PAA-WS	12/20/05	040951-WS	Transfer
*	*	080538-WU	Amendment

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