

State of Florida



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TALLAHASSEE, FLORIDA 32399-0850
COMMISSION CLERK

-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) *SM P D*
Office of the General Counsel (Klancker) *CMK JSB*

AW *TJD*

RE: Docket No. 080539-WS – Application for amendment of Certificate Nos. 076-W and 284-S to extend water and wastewater services to certain territory (Interlachen/Park Manor; Palm Port; Silver Lake Oaks) in Putnam County, by Aqua Utilities Florida, Inc.
County: Putnam

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\080539.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 16 counties throughout Florida. By Order Nos. 6236, issued August 19, 1974 (Interlachen Lakes Estates water), 7078, issued January 13, 1976 (Palm Port water and wastewater), and 23397, issued August 23, 1990 (Silver Lake Oaks water and wastewater), the Commission granted water and wastewater certificates for the above mention areas in Putnam County.¹ There have also been multiple certificate transfer and

¹ In Docket No. 74373-W, In re: Application of Interlachen Lakes Estates, Inc., for a certificate to operate a water system in Putnam County, Florida; and Docket Nos. 750436-W & 750437-S, In re: Application of Robertson

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amendment activities that have occurred over the years (see Attachment A, pages 11-12 of 12). On August 12, 2008, the Utility filed an application with the Commission to amend Certificate Nos. 076-W and 284-S to add water and wastewater territory to certain service areas (three water systems and two wastewater systems) in Putnam County, pursuant to Section 367.045(2), Florida Statutes (F.S.).

Of Aqua's Putnam County water and wastewater systems to be amended, the Utility provides service to approximately 435 water connections and 141 wastewater connections. 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 38 water connections and 7 wastewater connections located outside its certificated territory. The Utility is in the St. Johns River Water Management District. The Utility asserted that service to these residential customers began sometime between 1987 and 2003. The Utility has indicated 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 amendment of Certificate Nos. 076-W and 284-S to extend water and wastewater service to include those customers that it is already providing service to. In addition to the existing connections in the amended areas, some of the proposed territories include lands which are expected to be further developed. The proposed amended areas are contiguous to Aqua's existing Commission approved service territory. The Commission has jurisdiction for the amendment application pursuant to Section 367.045, F.S.

Development Company, Inc., for a certificate to operate a water and a sewer utility in Putnam County, Florida. AND Implementation of rates for metered water service by Robertson Development Company Inc., in Putnam County, Florida; and in Docket No. 891187-WS, In re: Application for transfer of assets from Silver Lake Properties, Inc. to Southern States Utilities, Inc. and amendment of Certificates Nos. 76-W and 284-S in Putnam County

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 amended certificates of authorization for its Interlachen/Park Manor; Palm Port; and Silver Lake Oaks systems in Putnam 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 approve Aqua's application to amend Certificates 076-W and 248-S?

Recommendation: Yes. The Commission should approve Aqua's application for amendment of Certificates 076-W and 284-S to include territories as reflected in Attachment A. The resultant order should serve as Aqua'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. In addition, the Utility should be ordered to file revised tariff sheets that incorporate the additional territories within 30 days from the date of the Commission order approving the amendment. (Rieger, Klancke)

Staff Analysis: This application is in compliance with the governing statute, Section 367.045, Florida Statutes, and Rule 25-30.036, Florida Administrative Code (F.A.C). The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C. No objections to the application have been received and the time for filing such has expired.

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.

Staff has contacted the Department of Environmental Protection (DEP) and learned that there are no outstanding notices of violation issued for Aqua's water and wastewater treatment facilities. The Utility also provided verification of deeds to the water and wastewater treatment plant sites. Adequate service territory maps and territory descriptions have also been provided. Description of the proposed territories and a list of orders identifying the utility's authorized service territory are appended to this recommendation as Attachment A. The Utility has filed revised tariff sheets incorporating the additional territories into its tariff. However, these tariff sheets are still incomplete, and further revision is necessary. Staff believes that the Utility should be given an additional 30 days from the date of the Commission order approving the amendment to file revised tariff sheets that incorporate the additional territories. The Utility is currently providing service to approximately 38 water connections and 7 wastewater connections located outside its certificated territory. The Utility has indicated that service to these residential customers began sometime between 1987 and 2003. The areas to be amended are to be included within the service areas of the Utility's Interlachen Estates, Palm Port, and Silver Lake Oaks water systems; as well as the Palm Port and Silver Lake Oaks wastewater systems. The Utility has indicated that throughout this time period, the calculation of the annual Regulatory Assessment Fees (RAFs) for Aqua 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 Aqua to amend its territories to reflect areas 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 Aqua'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. In addition, the Utility should be ordered to file revised tariff sheets that incorporate the

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additional territories 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

Interlachen Estates / Park Manor

Township 10 South, Range 25 East

Commence From The Northwest Corner Of Section 18 And Run S1°55'32"E Along The West Boundary Line Of Said Section A Distance Of 1286.5 Feet To The Point Of Beginning, Thence Run N89°57'35"E A Distance Of 2,652.6 Feet, Thence Run N88°31'35"E A Distance Of 212.2 Feet, Thence Run S5°5'4"W A Distance Of 455.4 Feet, Thence Run S77°13'17"W A Distance Of 2896.3 Feet, Thence Run N0°12'30"W A Distance Of 1086.8 Feet To The Point Of Beginning.

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

Interlachen Estates / Park Manor

Township 10 South, Range 25 East

Begin At The Southwest Corner Of Section 7 And Run N0°9'38"W A Distance Of 2,699.9 Feet, Thence Run S89°43'2"E A Distance Of 2,653.1 Feet, Thence Run S0°43'33"E A Distance Of 3,970.9 Feet, Thence Run N88°31'35"E A Distance Of 212.2 Feet, Thence Run S5°5'4"W A Distance Of 455.4 Feet, Thence Run S77°13'17"W A Distance Of 2,896.3 Feet, Thence Run N0°12'30"W A Distance Of 543.4 Feet, Thence Run N1°55'32"W A Distance Of 1,286.3 Feet To The Point Of Beginning.

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

Palm Port

Township 9 South, Range 27 East

Commence From The Southwest Corner Of Section 40 And Run N75°10'14"E A Distance Of 1,516.5 Feet To The Point Of Beginning, Thence Run N21°21'54"W A Distance Of 1,767.7 Feet, Thence Run N88°27'24"E A Distance Of 1,622.7 Feet, Thence Run S1°11'53"E A Distance Of 1,549.5 Feet, Thence Run S61°11'42"E A Distance Of 168.1 Feet, Thence Run S11°53'05"W A Distance Of 581.4 Feet To A Point More Or Less Located At The Southeast Corner Of Section 40 Also Being Located On The Northern Shoreline Of Cows Creek, Thence Meander 1,181.4 Feet More Or Less Along The Northern Shoreline Of Said Creek To The Point Of Beginning.

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

Palm Port

Township 9 South, Range 27 East

Point Of Beginning Being At The Southwest Corner Of Section 40, Township 9 South, Range 27 East, Putnam County, Florida, Where Cow's Creek Forms, Thence Meander Northeasterly Along The Waterline Of The St John's River A Distance Of 2,183.4 To A Point Located N25°54'01"W A Distance Of 2,243.8 Feet Away From The Point Of Beginning, Thence Run N88°30'34"E A Distance Of 3,304.3 Feet, Thence Run S1°11'53"E A Distance Of 1,549.5 Feet, Thence Run S61°11'42"E A Distance Of 168.1 Feet, Thence Run S11°53'05"W A Distance Of 581.4 Feet To A Point More Or Less Located At The Southeast Corner Of Section 40 Also Being Located On The Northern Shoreline Of Cows Creek, Thence Meander 2814.9 Feet More Or Less Along The Northern Shoreline Of Said Creek To The Point Of Beginning.

Aqua Utilities Florida, Inc.
Putnam County
Description of Wastewater Territory Added

Palm Port

Township 9 South, Range 27 East

Commence From The Southwest Corner Of Section 40 And Run N75°10'14"E A Distance Of 1,516.5 Feet To The Point Of Beginning, Thence Run N21°21'54"W A Distance Of 1,767.7 Feet, Thence Run N88°27'24"E A Distance Of 1,622.7 Feet, Thence Run S1°11'53"E A Distance Of 1,549.5 Feet, Thence Run S61°11'42"E A Distance Of 168.1 Feet, Thence Run S11°53'05"W A Distance Of 581.4 Feet To A Point More Or Less Located At The Southeast Corner Of Section 40 Also Being Located On The Northern Shoreline Of Cows Creek, Thence Meander 1,181.4 Feet More Or Less Along The Northern Shoreline Of Said Creek To The Point Of Beginning.

Aqua Utilities Florida, Inc.
Putnam County
Composite Wastewater Service Area

Palm Port

Township 9 South, Range 27 East

Point Of Beginning Being At The Southwest Corner Of Section 40, Township 9 South, Range 27 East, Putnam County, Florida, Where Cow's Creek Forms, Thence Meander Northeasterly Along The Waterline Of The St John's River A Distance Of 2,183.4 To A Point Located N25°54'01"W A Distance Of 2,243.8 Feet Away From The Point Of Beginning, Thence Run N88°30'34"E A Distance Of 3,304.3 Feet, Thence Run S1°11'53"E A Distance Of 1,549.5 Feet, Thence Run S61°11'42"E A Distance Of 168.1 Feet, Thence Run S11°53'05"W A Distance Of 581.4 Feet To A Point More Or Less Located At The Southeast Corner Of Section 40 Also Being Located On The Northern Shoreline Of Cows Creek, Thence Meander 2814.9 Feet More Or Less Along The Northern Shoreline Of Said Creek To The Point Of Beginning.

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

Silver Lake Oaks

Township 10 South, Range 26 East

Commence From The Southeast Corner Of Section 17 And Run N15°58'6"W A Distance Of 1477.3 Feet To The Point Of Beginning, Thence Run Due West A Distance Of 470.0 Feet, Thence Run N04°55'52"W A Distance Of 179.8 Feet, Thence Run N87°03'03"E A Distance Of 486.3' Feet, Thence Run Due South A Distance Of 193.5 Feet To The Point Of Beginning.

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

Silver Lakes Oaks

Township 10 South, Range 26 East

Commence From The Southeast Corner Of Section 17 And Run S89°10'53"W A Distance Of 412.7 Feet To The Point Of Beginning, Thence Run N89°27'56"W A Distance Of 469.0 Feet, Thence Run N00°15'38"W A Distance Of 1430.6 Feet, Thence Run Due East A Distance Of 11.7 Feet, Thence Run N04°55'52"W A Distance Of 179.8 Feet, Thence Run N87°03'03"E A Distance Of 486.3 Feet, Thence Run S00°13'29"W A Distance Of 1,630.4 Feet To The Point Of Beginning.

Aqua Utilities Florida, Inc.
Putnam County
Description of Wastewater Territory Added

Silver Lake Oaks

Township 10 South, Range 26 East

Commence From The Southeast Corner Of Section 17 And Run N15°58'6"W A Distance Of 1477.3 Feet To The Point Of Beginning, Thence Run Due West A Distance Of 470.0 Feet, Thence Run N04°55'52"W A Distance Of 179.8 Feet, Thence Run N87°03'03"E A Distance Of 486.3' Feet, Thence Run Due South A Distance Of 193.5 Feet To The Point Of Beginning.

Aqua Utilities Florida, Inc.
Putnam County
Composite Wastewater Service Area

Silver Lakes Oaks Interlachen

Township 10 South, Range 26 East

Commence From The Southeast Corner Of Section 17 And Run S89°10'53"W A Distance Of 412.7 Feet To The Point Of Beginning, Thence Run N89°27'56"W A Distance Of 469.0 Feet, Thence Run N00°15'38"W A Distance Of 1430.6 Feet, Thence Run Due East A Distance Of 11.7 Feet, Thence Run N04°55'52"W A Distance Of 179.8 Feet, Thence Run N87°03'03"E A Distance Of 486.3 Feet, Thence Run S00°13'29"W A Distance Of 1,630.4 Feet To The Point Of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Aqua Utilities Florida, Inc.
pursuant to
Certificate No. 076-W

to provide water service in Putnam 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>
5376	04/05/72	C-71587-W	Original Certificate
5499	08/04/72	C-71611-W	Original Certificate
6236	08/19/74	74373-W	Original Certificate
6975	10/24/75	750206-W	Amendment
7078	01/13/76	750436-W	Grandfather Certificate
7895	07/13/77	760711-W	Original Certificate
9389	05/23/80	791040-W	Transfer
9845A	04/07/81	800368-WS	Correction
9845	03/03/81	800368-WS	Transfer
9907	03/31/81	800638-W	Transfer
12580	10/05/83	830204-WS	Original Certificate
13519	07/17/84	840023-WU	Transfer
13844	11/09/84	840395-WU	Amendment
14059	02/05/85	840359-WS	Transfer
20469	12/20/88	880292-WS	Transfer
23397	08/23/90	891187-WS	Transfer
PSC-93-1293-FOF-WS	09/07/93	930443-WS	Amendment
PSC-97-0427-FOF-WS	04/16/97	970028-WS	Name Change
PSC-05-1242-PAA-WS	12/20/05	040951-WS	Transfer
*	*	080539-WS	Amendment

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

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Aqua Utilities Florida, Inc.
pursuant to
Certificate No. 284-S

to provide wastewater service in Putnam 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>
7078	01/13/76	750437-S	Grandfather Certificate
9845	03/03/81	800368-WS	Transfer
9845-A	04/07/81	800368-WS	Correction
12580	10/05/83	830204-WS (AP)	Original Certificate
20469	12/20/88	880292-WS	Transfer
23397	08/23/90	891187-WS	Transfer
PSC-93-1293-FOF-WS	09/07/93	930443-WS	Amendment
PSC-97-0427-FOF-WS	04/16/97	970028-WS	Name Change
PSC-05-1242-PAA-WS	12/20/05	040951-WS	Transfer
*	*	080539-WS	Amendment

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