

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: July 22, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Simpson, Rieger)
Office of the General Counsel (Williams)

MS SDG in ARW JSCARCO [Signature]

RE: Docket No. 100301-WS – Application for amendment of Certificates 414-W and 347-S to extend water and wastewater service areas to include certain land in Highlands County by Lake Placid Utilities, Inc.

AGENDA: 08/03/10 – 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\100301.RCM.DOC

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COMMISSION
CLERK

Case Background

On May 19, 2010, Lake Placid Utilities, Inc. (Lake Placid or Utility) filed an application with the Commission to amend Certificate Nos. 414-W and 347-S to add water and wastewater territory to its service area in Highlands County, pursuant to Section 367.045(2), Florida Statutes (F.S.). Lake Placid is a Class B utility providing water and wastewater service to approximately 122 water and 192 wastewater customers. The Utility's 2009 annual report shows combined water and wastewater annual operating revenues of \$129,585 and a net loss of \$6,434.

This application was filed in response to a recent review of the Utility's service territory which revealed that the Utility is providing water and wastewater service to nine connections located outside of its certificated territory. The area to be added is adjacent to the Utility's

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existing certificated water and wastewater service areas. The proposed territory will have the potential to accommodate 52 connections in the Village Del Mar development. The Utility currently has a rate case (Docket No. 090531-WS) pending with the Commission, which will be considered at the August 31, 2010 Agenda Conference. The Commission has jurisdiction for the amendment application pursuant to Section 367.045, F. S.

Discussion of Issues

Issue 1: Should Placid Lake 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. (Williams)

Staff Analysis: As stated in the case background, a review of the Utility's service territory revealed that the Utility is providing service to nine water and wastewater connections that are outside of its certificated territory. The Utility indicated that for some unknown reason, the requirement to file a petition for certificate amendments to serve a newly developed subdivision was inadvertently overlooked. When the error was discovered, Lake Placid filed this instant application to correct the mistake to include the newly developed subdivision.

Section 367.045(2), F.S., 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), F.S., 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, F.S. 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, F.S. 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 Lake Placid'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), F.S., there are circumstances which appear to mitigate the utility's actions. Nine connections have been made to the water and wastewater system, although the homes are currently vacant. The proposed territory is adjacent to its service area, and Lake Placid had assumed that the territory was already within its service territory. 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, 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 Lake Placid to show cause why it should not be fined for failing to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

Issue 2: Should the Commission approve Lake Placid's application for amendment of Certificates 414-W and 347-S?

Recommendation: Yes. The Commission should approve Lake Placid's application for amendment of Certificates 414-W and 347-S to include territory as reflected in Attachment A. The resultant order should serve as Lake Placid's amended certificates and should be retained by the Utility. Pursuant to Rule 25-9.044(1), Florida Administrative Code (F.A.C), the Utility should charge the customers in the territory added herein the rates and charges contained in its current tariff until authorized to be changed by the Commission. (Simpson, Rieger)

Staff Analysis: The Utility's application is in compliance with the governing statute, Section 367.045, F.S., and Rule 25-30.036, F.A.C. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.036, F.A.C. No objections to the application have been received, and the time for filing such has expired.

According to the application, the Utility has the ability to serve the proposed areas, including the necessary financial and technical expertise. Lake Placid is one of several water and wastewater systems in Florida owned by Utilities, Inc. In addition, the Utility indicated that its current water and wastewater systems have sufficient capacity to serve the proposed 52 connections. Only 9 homes have been connected to the system, and they are currently vacant. Staff contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation issued for Lake Placid's water and wastewater facilities.

The Utility provided evidence of ownership of the water and wastewater treatment plant sites. Adequate service territory maps and territory descriptions have also been provided. As discussed in Issue 1, the Utility had assumed that the proposed area was within its certificated service territory because the proposed territory was adjacent to its service area and had therefore misinterpreted the legal description covering the proposed territory.

Based on the foregoing, staff recommends that it is in the public interest to approve the application filed by Lake Placid to amend its territory to include 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 Lake Placid's amended certificates and should be retained by the Utility. Pursuant to Rule 25-9.044(1), F.A.C., the Utility should charge the customers in the territory added herein the rates and charges contained in the current tariff until authorized to be changed 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. (Williams)

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.

LAKE PLACID UTILITIES, INC
DESCRIPTION OF TERRITORY ADDED
WATER AND WASTEWATER

Township 37 South, Range 30 East

Sections 20 and 21

Commence from the Southwest corner of Section 21 and travel North 08°13'14" West a distance of 809.60 feet to the Point of Beginning; thence North 28°42'23" West a distance of 584.34 feet; thence North 61°17'37" East a distance of 637.30 feet more or less to a point located on the western shore of Lake Grassy; thence follow the shoreline in a Southeasterly direction to a point located North 15°17'42" East a distance of 1,115.40 feet more or less from the Southwest corner of Section 21; thence South 11°20'51" East a distance of 24.68 feet; thence South 01°12'12" East a distance of 137.00 feet; thence South 00°04'29" West a distance of 163.31 feet; thence South 89°42'27" West a distance of 317.73 feet; thence North 01°13'13" West a distance of 50.08 feet; thence North 89°08'58" West a distance of 98.73 feet to the Point of Beginning.

Section 28

Commence from the Southeast corner of the Northwest ¼ of Section 28; thence North 89°48'35" East a distance of 2,057.30 feet to the Point of Beginning; thence North 00°03'556" East a distance of 490.95 feet; thence South 89°39'04" East a distance of 559.00 feet; thence South 00°03'56" West a distance of 485.69 feet; thence South 89°48'35" West a distance of 559.00 feet to the Point of Beginning.

LAKE PLACID UTILITIES, INC.
DESCRIPTION OF CONSOLIDATED WATER AND WASTEWATER TERRITORY

Township 37 South, Range 30 East

Section 20, Section 21, and Section 28

Beginning at the Southeast corner of the Northwest $\frac{1}{4}$ of Section 28; thence North $89^{\circ}48'35''$ East a distance of 2,057.30 feet; thence North $00^{\circ}03'56''$ East a distance of 490.95 feet; thence South $89^{\circ}39'04''$ East a distance of 559.00 feet; thence South $00^{\circ}03'56''$ West a distance of 485.69 feet; thence North $89^{\circ}48'35''$ East a distance of 23.70 feet; thence South $00^{\circ}04'03''$ East a distance of 900 feet; thence North $89^{\circ}44'59''$ West a distance of 3,916.15 feet, more or less, to the East Right of Way of U. S. Highway 27; thence following the Right of Way in a Northwesterly direction 5,198 feet, more or less; thence North $61^{\circ}17'37''$ East a distance of 637.30 feet, more or less, to a point located on the western shore of lake Grassy; thence follow the shoreline in a Southeasterly direction to a point located North $15^{\circ}17'42''$ East a distance of 1,115.40 feet, more or less, from the Northwest corner of Section 28; thence South $11^{\circ}20'51''$ East a distance of 24.68 feet; thence South $01^{\circ}12'12''$ East a distance of 137.00 feet; thence South $00^{\circ}03'29''$ West distance of 163.31 feet; thence North $89^{\circ}42'27''$ East a distance of 851.83 feet to a point located on the western shoreline of Lake Grassy; thence following the shoreline in an Easterly direction to a point located North $72^{\circ}42'42''$ East a distance of 1,777.70 feet from the Northwest corner of Section 28; thence South $00^{\circ}09'31''$ East a distance of 523.75 feet to the northern boundary of Section 28; thence following northern boundary in a Easterly direction 942.23 feet, more or less; thence South $00^{\circ}09'31''$ East a distance of 2,628.58 feet to the Point of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Lake Placid Utilities, Inc.
pursuant to
Certificate Number 414-W

to provide water service in Highlands County in accordance with the provision 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>
12447	09/06/83	830141-WS	Grandfather
PSC-94-1465-FOF-WS	11/29/94	930570-WS	Transfer
PSC-06-0094-FOF-WS	02/09/06	050499-WS	Transfer
*	*	100301-WS	Amendment

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

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Lake Placid Utilities, Inc.
pursuant to
Certificate Number 347-S

to provide sewer service in Highlands County in accordance with the provision 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>
12447	09/06/83	830141-WS	Grandfather
PSC-94-1465-FOF-WS	11/29/94	930570-WS	Transfer
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