

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: January 13, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Redemann, Simpson)
Office of the General Counsel (Fleming)

RE: Docket No. 080613-SU – Application for amendment of Certificate No. 546-S to extend certain service areas in Highlands County by Silver Lake Utilities, Inc.

AGENDA: 01/26/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED:

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080613.RCM.DOC

Case Background

Silver Lake Utilities, Inc. (Silver Lake or utility) is a Class C utility. By Order No. PSC-07-0717-FOF-WS, issued September 4, 2007, the Commission granted Silver Lake Certificate Nos. 636-W and 546-S to serve territory in Highlands and Glades Counties; original water and wastewater rates were also established in that docket by Order No. PSC-07-0983-PAA-WS, dated December 10, 2007.¹ By Order No. PSC-08-0520-FOF-WU,² issued August 12, 2008, the Commission approved an amendment to the utility's water service area to include approximately 2,072 additional acres in Highlands County. On September 29, 2008, Silver Lake filed an

¹ Docket No. 060726-WS, In re: Application for certificates to provide water and wastewater service in Glades County and water service in Highlands County by Silver Lake Utilities, Inc.

² Docket No. 080213-WU, In re: Application for amendment of Certificate 636-W to extend water service area in Highlands County by Silver Lake Utilities, Inc.

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amendment application to add the approximately 2,072 additional acres in Highlands County to its wastewater service area. The proposed area is located in the Southwest Florida Water Management District (SWFWMD). The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve the application to amend Certificate No. 546-S in Highlands County by Silver Lake Utilities, Inc.?

Recommendation: Yes, the Commission should approve Silver Lake's amendment application to expand its territory. The proposed territory amendment is described in Attachment A to this recommendation. The resultant order should serve as Silver Lake's amended certificate and it should be retained by the utility. Silver Lake should charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by the Commission in a subsequent proceeding. The applicant should submit an executed and recorded lease agreement for the proposed wastewater plant site within one year from the date of the order approving the amendment or prior to construction of the wastewater treatment plant, whichever comes first. (Redemann, Simpson)

Staff Analysis: On September 29, 2008, Silver Lake filed an amendment application, pursuant to Rule 25-30.036(3), Florida Administrative Code (F.A.C.), for approximately 2,072 additional acres in Highlands County. The utility anticipates that it will serve a mix of single family, multi-family, commercial, office, light industrial, hotel, and golf course-related customers in the proposed area. The application complies with the governing statute, Section 367.045, F.S., and other pertinent statutes and administrative rules concerning an application for amendment of certificate.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C. No objections to the notice were received and the time for filing such has expired. Adequate service territory and system maps and a territory description have been provided. A description of the proposed territory is appended to this recommendation as Attachment A.

According to the application, the utility has the financial and technical ability to provide wastewater service in the proposed area. The utility is funded through its sole shareholder, Lykes Bros., Inc. A related party developer will be applying for approval of a development of regional impact (DRI) for the proposed area. Further, the utility will employ personnel necessary to ensure the efficient provision of wastewater service in the proposed service area.

Rule 25-30.036(3)(d), F.A.C., requires evidence that the utility owns or has long-term access to the land on which the utility treatment facilities will be located. The utility intends to enter into a long-term lease for the land for the wastewater treatment facilities. The applicant should submit an executed and recorded long-term lease agreement for the land for the wastewater treatment facilities within one year from the date of the order approving the amendment or prior to construction of the wastewater treatment plant, whichever comes first.

According to the Department of Community Affairs (DCA), the proposed expansion is inconsistent with the Highlands County Comprehensive Plan. The area is currently designated as Agricultural on the County's Future Land Use Map, which allows residential development at a density of one dwelling unit per five acres. An aerial photo of the area revealed that very little development has taken place between the proposed site and the Town of Lake Placid.

The utility responded to the DCA comments by stating that, pursuant to Section 367.045(5)(b), F.S., the Commission need not consider whether the issuance of the amendment is inconsistent with the local comprehensive plan unless a timely objection is filed raising that issue. There have been no objections filed with regard to the application by Silver Lake in this docket.

The proposed extension of wastewater service encompasses a planned DRI known as Lake Placid Groves. The Lake Placid Groves DRI project narrative summary was completed in January 2008. This Pre-Application conference document and information was submitted to the Central Florida Regional Planning Council and the DCA. It is anticipated that the DRI will be submitted to Highlands County in early 2009.

As recognized by the DCA, this property may currently be developed at a density of one dwelling unit per five acres, which would be approximately 414 dwelling units. The current comprehensive plan requires that subdivisions of such agricultural properties be developed as cluster developments. A cluster development would concentrate the dwelling units in one area, leaving large vacant areas. Therefore, even at densities permitted under the current comprehensive plan, development of the property would require central wastewater service. Thus, the utility believes that it is appropriate for the Commission to grant the application of Silver Lake in this docket without regard to consistency with the comprehensive plan.

Based on the above information, staff recommends that the utility has the financial and technical ability to serve the proposed additional territory. The existing comprehensive plan allows development in the proposed area at a density of one dwelling unit per five acres, and the utility is working with Highlands County and the DCA to obtain approval of the proposed DRI. Therefore, staff recommends that the Commission approve Silver Lake's amendment application. The proposed territory amendment is described in Attachment A to this recommendation. The resultant order should serve as Silver Lake's amended certificate and it should be retained by the utility. Silver Lake should charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by the Commission in a subsequent proceeding. The applicant should submit an executed and recorded long-term lease agreement for the land for the wastewater treatment facilities within one year from the date of the order approving the amendment or prior to construction of the wastewater treatment plant, whichever comes first.

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Issue 2: Should this docket be closed?

Recommendation: No. The docket should remain open to allow the utility time to file an executed and recorded long-term lease for the land for the wastewater treatment facilities. The docket should be closed administratively upon receipt of the executed and recorded lease. (Fleming)

Staff Analysis: The docket should remain open to allow the utility time to file an executed and recorded long-term lease for the land for the wastewater treatment facilities. The docket should be closed administratively upon receipt of the executed and recorded lease.

SILVER LAKE UTILITIES, INC.
DESCRIPTION OF TERRITORY SERVED

Wastewater Service Area

Highlands County

A parcel of land located in Sections 1, 2, 3, 11, 12, 13 and 14 in Township 36 South, Range 29 East and in Section 7 in Township 36 South, Range 30 East, Highlands County, Florida being more particularly described as follows:

Beginning at the Southeast corner of Section 1, Township 36 South, Range 29 East, said point also being the Northwest corner of Section 7, Township 36 South, Range 30 East; Thence East, along the North line of said Section 7, to the East line of the West 330 feet of the Northwest quarter; Thence South, along said East line to the point of intersection with the South line of the North 1320 feet of the Northwest quarter; Thence West, along said South line to the West line of said Section 7, said line also being the East line of Section 12, Township 36 South, Range 29 East; Thence South along the East line of Section 12 and Section 13, Township 36 South, Range 29 East to the ordinary high water line of Lake Apthorpe; Thence meander along said ordinary high water line Southwesterly and Westerly to the West line of the Northeast quarter of the Southeast quarter of said Section 13; Thence North, along said West line to the South line of the North one-half of said Section 13; Thence West along said South line to the ordinary high water line of S.E. Lake Nellie; Thence Northerly, Westerly and Southerly along said ordinary high water line back to the aforesaid South line of the North one-half of said Section 13; Thence West along said South line and along the South line of the North one-half of Section 14, Township 36 South, Range 29 East; to a line 200 feet East of and parallel with, as measured at right angles to, the Easterly right-of-way line of U.S. Highway 27; Thence Northerly along said line, a distance of 447.50 feet; Thence Westerly departing said line, a distance of 200 feet, to the aforesaid Easterly right-of-way line of U.S. Highway 27; Thence Northerly along said Easterly right-of-way line to the North line of said Section 14; said line also being the South line of Section 11, Township 36 South, Range 29 East; Thence West along said South line to the Southwest corner of said Section 11; Thence North along the West line of said Section 11 to the North line of the South one-half of the Northwest quarter of said Section 11; Thence East along said North line to the East right-of-way line of aforesaid U.S. Highway 27; Thence Northwesterly along said Easterly right-of-way line to the North line of the South one-half of Section 3, Township 36 South, Range 29 East; Thence East along said North line and along the North line of the South one-half of Section 2, Township 36 South, Range 29 East, to the Easterly right-of-way line of County Road 17; Thence Southerly along said Easterly right-of-way line to the South line of the North one-half of the North one-half of the North one-half of the South one-half of said Section 2; Thence East along said South line to the East line of said Section 2, said line also being the West line of aforesaid Section 1, Township 36 South, Range 29 East; Thence continue East along the South line of the North one-half of the Northwest quarter of the Northwest quarter of the Southwest quarter of said Section 1 to the East line of the Northwest quarter of the Northwest quarter of the Southwest quarter of said Section 1; Thence North along said East line to the North line of the South one-half of said Section 1; Thence East along said North line to the Northeast corner of the Northwest quarter of the Southeast quarter of said

Section 1; thence South along the East line of said Northwest quarter of the Southeast quarter to the Southeast corner of said Northwest quarter of the Southeast quarter, said point also being the Northwest corner of the Southeast quarter of the Southeast quarter of said Section 1; Thence East along the North line of said Southeast quarter of the Southeast quarter to the Northeast corner of said Southeast quarter of the Southeast quarter of said Section 1; Thence South, along the East line of said Section 1, to the Southeast corner of said Section 1 and the Point of Beginning.

The description also includes any portion of Southeast Lake Nellie that may be determined to be privately owned by Lykes Bros, Inc.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

Silver Lake Utilities, Inc.
pursuant to
Certificate Number 546-S

to provide wastewater service in Glades and Highlands Counties 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>
PSC-07-0717-FOF-WS *	09/04/2007 *	060726-WS 080613-SU	Original Certificate Amendment

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