

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-**

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**DATE:** March 26, 2009

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Redemann)  
Office of the General Counsel (Sayler)

**RE:** Docket No. 080537-WU – Application for quick-take amendment of Certificate No. 587-W to extend the Lake Gibson Estates water service territory in Polk County by Aqua Utilities Florida, Inc.  
County: Polk

**AGENDA:** 04/7/09 – 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\080537.RCM.DOC

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### Case Background

Aqua Utilities Florida, Inc. (Aqua or Utility) is a Class A utility with 82 water and wastewater systems located in sixteen counties throughout Florida. By Order No. PSC-97-0376-FOF-WS, issued April 7, 1997, the Commission granted Certificate No. 587-W to the Utility to serve territory in Polk County; original water and wastewater rates were also established in that docket.<sup>1</sup> The proposed area is located in the Southwest Florida Water Management District (SWFWMD). Aqua provides water and wastewater service to approximately 769 water and 303

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<sup>1</sup> In Docket No. 960909-WS, In re: Application for Grandfather Certificates to Provide Water and Wastewater Service in Polk County by Southern States Utilities, Inc.

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wastewater customers in Lake Gibson Estates, including eight connections that are outside of its certificated area. Wastewater service is provided by septic tanks to these eight customers. It was discovered during the 2006 rate case (Docket No. 060368-WS) that the Utility was serving outside its territory at this system. On August 18, 2008, one customer notified the Commission that the territory description was difficult to read, and objected to notice. The staff attorney contacted the customer and explained the process and the customer did not pursue an objection.

On August 12, 2008, the Utility applied for a "Quick Take" amendment application in Polk County for its water system. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes (F.S.).

### **Discussion of Issues**

**Issue 1:** Should Aqua Utilities Florida, Inc. be ordered to show cause, in writing, within 21 days, why it should not be fined for serving outside its certificated territory without prior Commission approval in apparent violation of Section 367.045(2), F.S.?

**Recommendation:** No, a show cause proceeding should not be initiated. (Saylor)

**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 amendment for Certificate No. 587-W 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 Utilities Florida, Inc.'s "Quick Take" application to amend Certificate No. 587-W in Polk County?

**Recommendation:** Yes, the Commission should acknowledge Aqua's amendment application to amend/extend its territory. The proposed territory amendment is described in Attachment A to this recommendation. The resultant order should serve as Aqua's amended certificate and it should be retained by the Utility. Aqua should charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by this Commission 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. (Redemann)

**Staff Analysis:** On August 12, 2008, Aqua applied for a "Quick Take" amendment to Water Certificate No. 587-W in Polk County, Florida, pursuant to Rule 25-30.036(2), Florida Administrative Code (F.A.C.) for eight residential customers in the Lake Gibson Estates system. The completed application was filed on February 16, 2009. Service to these eight water customers occurred between November 1987 and May 2003. The requested territories are contiguous to the Utility's existing service territory.

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. Adequate service territory maps and a territory description have been provided as prescribed by Rule 25-30.036(3)(e) and (i), F.A.C. The additional territory requested by Aqua is described in Attachment A. A composite territory description which reflects the combined existing and amended areas are also included in Attachment A. The Utility has submitted an affidavit consistent with Section 367.045(2)(d), F.S., that it has tariffs and annual reports on file with the Commission.

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 an existing certificate 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. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C.

The Utility states that the new territory will not exceed a maximum of 25 ERCs at the time the territories are built out. According to Aqua, no other utility in the area is willing and/or capable of providing reasonably adequate service to the territory. The Utility has indicated that throughout this time period, the calculation of the RAFs for Aqua was inclusive of all of these customers.

Staff has contacted the Polk County Health Department and learned that there are no outstanding notices of violation issued for Aqua. Staff recommends that the rates and charges approved by the Commission for Aqua's service area be applied to the customers in the new service territory.

Based on the above information, the Commission should acknowledge Aqua'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 Aqua's amended certificate and it should be retained by the Utility. Aqua should charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by this Commission 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.

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**Issue 3**: Should this docket be closed?

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

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

Aqua Utilities Florida, Inc.  
Polk County  
Description of Water Territories Added

Lake Gibson

Township 27 South, Range 23 East in Sections 19

1. Begin At The Southeast Corner Of Section 24 Also Referred To As The Point Of Beginning And Run N00°08'25"E A Distance Of 1,863.6 Feet, Thence Run N89°03'25"E A Distance Of 981.1 Feet, Thence Run N89°04'32"E A Distance Of 99.0 Feet, Thence Run S00°08'24"W A Distance Of 532.1 Feet, Thence Run S88°53'17"W A Distance Of 301.2 Feet, Thence Run S00°00'52"E A Distance Of 100.0 Feet, Thence Run S88°50'12"E A Distance Of 185.9 Feet, Thence Run S00°07'57"W A Distance Of 574.8 Feet, Thence Run S88°48'37"W A Distance Of 14.4 Feet, Thence Run S00°03'33"W A Distance Of 322.8 Feet, Thence Run S88°48'37"W A Distance Of 79.4 Feet, Thence Run S00°03'35"W A Distance Of 330.0 Feet, Thence Run S88°50'01"W A Distance Of 872.5 Feet To The Point Of Beginning.

2. Commence At The Southwest Corner Of Section 19, Township 27s, Range 24e And Run N 00°08'28"E A Distance Of 2395.2 Feet To The Point Of Beginning, Thence Run N00°14'24"E A Distance Of 295.1 Feet, Thence Run N89°15'51"E A Distance Of 980.1 Feet, Thence Run S00°04'53"W A Distance Of 292.4 Feet, Thence Run S89°06'27"W A Distance Of 981.0 Feet To The Point Of Beginning.

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

Lake Gibson

Township 27 South, Range 23 East in Sections 19 and 24

Commence From The Northwest Corner Of Section 24 And Run N89°33'56"E A Distance Of 2223.4 Feet To The Point Of Beginning, Thence Run N89°32'57"E A Distance Of 450.0 Feet, Thence Run S0°14'02"W A Distance Of 1329.2 Feet, Thence Run N89°35'02"E A Distance Of 2874.0 Feet, Thence Run S0°14'24"W A Distance Of 1297.4 Feet, Thence Run N89°15'51"E A Distance Of 980.1 Feet, Thence Run S0°6'48"W A Distance Of 823.0 Feet, Thence Run N89°4'32"E A Distance Of 99.0 Feet, Thence Run S0°8'24"W A Distance Of 532.1 Feet, Thence Run S88°53'17"W A Distance Of 301.2 Feet, Thence Run S0°0'52"E A Distance Of 100.0 Feet, Thence Run N88°50'12"E A Distance Of 185.9 Feet, Thence Run S00°07'57"W A Distance Of 574.8 Feet, Thence Run S88°48'37"W A Distance Of 14.4 Feet, Thence Run S00°03'33"W A Distance Of 322.8 Feet, Thence Run S88°48'37"W A Distance Of 79.4 Feet, Thence Run S0°3'35"W A Distance Of 330.0 Feet, Thence Run S88°50'01"W A Distance Of 872.5 Feet, Thence Run S89°36'21"W A Distance Of 1,210.4 Feet To A Point More Or Less Located On The Eastern Shoreline Of Lake Gibson, Thence Meander Northwesterly 3535.2 Feet Along Said Shoreline, Thence Run N00°14'27"E A Distance Of 663.7 Feet, Thence Run N89°37'39"W A Distance Of 829.8 Feet, Thence Run Due North A Distance Of 622.3 Feet, Thence Run N89°54'46"W A Distance Of 507.0 Feet, Thence Run N00°20'37"E A Distance Of 1328.8 Feet, Thence Run N89°33'47"E A Distance Of 2,226.0 Feet, Thence Run N00°14'02"E A Distance Of 1,329.2 Feet To The Point Of Beginning.



**FLORIDA PUBLIC SERVICE COMMISSION**  
**authorizes**  
**Aqua Utilities Florida, Inc.**  
**pursuant to**  
**Certificate Number 587-W**

to provide water service in Seminole 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>
PSC-97-0376-FOF-WS	04/07/97	960909-WS	Grandfather
PSC-97-0427-FOF-WS	04/16/97	970028-WS	Name Change
PSC-05-1242-PAA-WS	12/20/05	040951-WS	Transfer
*	*	080537-WU	Amendment

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