

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: March 26, 2009

TO: Office of Commission Clerk (Cole)

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

RE: Docket No. 080541-WU – Application for amendment of Certificate No. 346-W to extend water service to certain territory (49th Street; Belleair; Bellview Hills Estates, Ocala Oaks/Sky Ranch) in Marion County, by Aqua Utilities Florida, Inc.
County: Marion

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\080541.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. 10471, issued December 23, 1981, the Commission granted a water certificate for areas in Marion County.¹ There has also been multiple certificate transfer and amendment activities that have occurred over the years (see Attachment A, page 9 of 9). On August 12, 2008, the Utility filed an application with the Commission to amend Certificate Nos. 346-W to add water territory

¹ In Docket No.810470-W, In re: Application of Ocala Oaks utilities for a certificate to operate a water utility in Marion County, Florida.

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to certain service areas (four water systems) in Marion County, pursuant to section 367.045(2), Florida Statutes (F.S.).

Of Aqua's Marion County water systems to be amended, the Utility provides service to approximately 1,263 water connections. The Utility is in the St. Johns River and Southwest Florida Water Management Districts. A recent review of the Utility's service territory revealed that the Utility is currently providing service to approximately 39 water connections located outside its certificated territory. The Utility asserted that service to these residential customers occurred sometime between 1991 and 2003. 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 amendment of Certificate No. 346-W to extend water 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 territories. The Commission has jurisdiction for the amendment application pursuant to section 367.045, 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 49th Street, Belleair, Bellview Hills Estates, and Ocala Oaks/Sky Ranch in Marion 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 Certificate 346-W?

Recommendation: Yes. The Commission should approve Aqua's application for amendment of Certificate 346-W to include territory 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, F.S., 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.

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 systems have sufficient capacity to serve the proposed areas. Staff has contacted the Department of Environmental Protection (DEP) and learned that there are no outstanding notices of violation issued for Aqua's water treatment facilities.

The Utility also provided verification of a deed to the water treatment plant sites. Adequate service territory maps and territory descriptions have also been provided. No objections to the application have been received and the time for filing such has expired. The Utility is currently providing service to approximately 39 water connections located outside its certificated territory. The Utility has indicated that service to these residential customers occurred sometime between 1991 and 2003. Until recently, the Utility had assumed that the proposed areas were always within the certificated areas authorized by the Commission. The Utility has indicated that throughout this time period, the calculation of the annual RAFs for Aqua was inclusive of all of these customers. 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.

Based on the foregoing, staff believes it is in the public interest to approve the application filed by Aqua to amend its territory to reflect 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 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 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.
Marion County
Description of Water Territory Added

49th Street

Township 14 South, Range 22 East

1. Commence At The Northwest Corner Of Section 34 And Run S0°22'5"W A Distance Of 332.2 Feet To The Point Of Beginning, Thence Run N89°56'11"E A Distance Of 2,264.2 Feet, Thence Run S00°15'34"W A Distance Of 2,012.1 Feet, Thence Run N89°44'7"W A Distance Of 1,319.5 Feet, Thence Run N00°13'05"E A Distance Of 657.3 Feet, Thence Run S89°50'35"E A Distance Of 657.0 Feet, Thence Run N00°16'29"E A Distance Of 657.7 Feet, Thence Run N89°44'30"W A Distance Of 656.0 Feet, Thence Run S00°21'45"W A Distance Of 662.0 Feet, Thence Run N89°39'46"W A Distance Of 662.8 Feet, Thence Run N00°24'24"E A Distance Of 662.2 Feet, Thence Run N89°50'18"W A Distance Of 661.1 Feet, Thence Run N00°18'57"E A Distance Of 326.3 Feet To The Point Of Beginning.

2. Commence From The Southwest Corner Of Section 27 And Run S89°48'29"E A Distance Of 1325.6 Feet To The Point Of Beginning, Thence Run N0°19'55"W A Distance Of 657.7 Feet, Thence Run N00°13'48"W A Distance Of 97.0 Feet, Thence Run S89°59'10"E A Distance Of 839.3 Feet, Thence Run S00°16'07"W A Distance Of 52.8 Feet, Thence Run S89°27'55"E A Distance Of 386.6 Feet, Thence Run S00°00'41"W A Distance Of 672.8 Feet, Thence Run N89°44'46"E A Distance Of 94.5 Feet, Thence Run S0°17'31"W A Distance Of 31.3 Feet, Thence Run N89°48'05"W A Distance Of 1315.6 Feet To The Point Of Beginning.

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

49th Street

Township 14 South, Range 22 East

Begin At The Southwest Corner Of Section 27 And Run N0°10'57"E A Distance Of 659.9 Feet, Thence Run S89°45'21"E A Distance Of 1319.7 Feet, Thence Run N0°13'48"W A Distance Of 97 Feet, Thence Run S89°59'10"E A Distance Of 839.3 Feet, Thence Run S00°16'07"W A Distance Of 52.8 Feet, Thence Run S89°27'55"E A Distance Of 386.6 Feet, Thence Run S00°00'41"W A Distance Of 672.8 Feet, Thence Run N89°44'46"E A Distance Of 94.5 Feet, Thence Run S0°15'34"W A Distance Of 2012.1 Feet, Thence Run N89°44'7"W A Distance Of 1319.5 Feet, Thence Run N00°13'05"E A Distance Of 657.3 Feet, Thence Run N89°39'46"W A Distance Of 662.8 Feet, Thence Run N0°24'24"E A Distance Of 662.2 Feet, Thence Run N89°50'18"W A Distance Of 661.1 Feet, Thence Run N00°15'44"E A Distance Of 1,318.4 Feet To The Point Of Beginning.

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

Bellair

Township 15 South, Range 22 East

Commence From The Southwest Corner Of Section 24 And Run N65°7'47"E A Distance Of 1,463.6 Feet To The Point Of Beginning, Thence Run N00°00'28"E A Distance Of 732.6 Feet, Thence Run S89°51'47"E A Distance Of 334.9 Feet, Thence Run S00°00'07"E A Distance Of 732.3 Feet, Thence Run N89°54'22"W A Distance Of 335.0 Feet To The Point Of Beginning.

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

Bellair

Township 15 South, Range 22 East

Commence From The Southwest Corner Of Section 24 And Run N44°34'47"E A Distance Of 1,892.4 Feet To The Point Of Beginning, Thence Run S89°57'25"E A Distance Of 1,331.3 Feet, Thence Run S0°1'56"E A Distance Of 324.4 Feet, Thence Run S89°16'24"W A Distance Of 662.4 Feet, Thence Run S0°13'45"E A Distance Of 674.8 Feet, Thence Run S89°45'29"E A Distance Of 667.6 Feet, Thence Run N0°14'51"E A Distance Of 345.6 Feet, Thence Run Due West 1,310.3 Feet, Thence Run Due South A Distance Of 691.4 Feet, Thence Run S89°53'20"W A Distance Of 99.7 Feet, Thence Run N35°49'15"W A Distance Of 30.6 Feet, Thence Run S89°46'14"W A Distance Of 1,125.8 Feet, Thence Run S34°48'38"W A Distance Of 123.1 Feet, Thence Run S00°14'17"W A Distance Of 1,222.2 Feet, Thence Run S89°48'0"W A Distance Of 1,332.3 Feet, Thence Run N00°00'15"W A Distance Of 2,665.0 Feet To The Point Of Beginning.

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

Bellview Hills Estates

Township 17 South, Range 23 East

Commence From The Northwest Corner Of Section 18 And Run S78°55'40"E A Distance Of 2709.9 Feet To The Point Of Beginning, Thence Run Due East A Distance Of 175.8 Feet, Thence Run S9°25'9"E A Distance Of 674.6 Feet, Thence Run N89°47'2"W A Distance Of 287.1 Feet, Thence Run N0°44'35"E A Distance Of 664.4 Feet To The Point Of Beginning.

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

Bellview Hills Estates

Township 17 South, Range 23 East

Begin At The Northwest Corner Of Section 18 And Run S89°45'29"E A Distance Of 2699.1 Feet, Thence Run S9°19'45"E A Distance Of 1330.6 Feet, Thence Run S89°47'02"W A Distance Of 287.1 Feet, Thence Run S0°4'35"W A Distance Of 310.1 Feet, Thence Run Due West A Distance Of 348.8 Feet, Thence Run S0°0'1"E A Distance Of 1024.8 Feet, Thence Run Due West A Distance Of 1262.1 Feet, Thence Run N0°33'27"W A Distance Of 225.8 Feet, Thence Run Due West A Distance Of 529.1 Feet, Thence Run Due South A Distance Of 225.5 Feet, Thence Run Due West A Distance Of 485.1 Feet, Thence Run Due North A Distance Of 2658.2 Feet To The Point Of Beginning.

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

Sky Ranch

Township 14 South, Range 22 East

1. Commence From The Northwest Corner Of Section 33 And Run S25°23'9"E A Distance Of 1459.8 Feet To The Point Of Beginning, Thence Run N89°57'25"E A Distance Of 1361.8 Feet, Thence Run S00°03'07"E A Distance Of 666.1 Feet, Thence Run West A Distance Of 1362.7 Feet, Thence Run N0°0'55"E A Distance Of 663.1 Feet To The Point Of Beginning.
2. Commence From The Southeast Corner Of Section 33 And Run N88°13'28"W A Distance Of 1288.2 Feet To The Point Of Beginning, Thence Run N0°10'39"E A Distance Of 129.9 Feet, Thence Run Due West A Distance Of 86.4 Feet, Thence Run S0°38'42"E A Distance Of 129.5 Feet, Thence Run S89°43'44"E A Distance Of 84.5 Feet To The Point Of Beginning.
3. Commence From The Southeast Corner Of Section 33 And Run N88°46'41"W A Distance Of 1890.4 Feet To The Point Of Beginning, Thence Run N0°7'43"E A Distance Of 1291.6 Feet, Thence Run N89°51'27"W A Distance Of 721.4 Feet, Thence Run S0°16'03"W A Distance Of 1290.0 Feet, Thence Run S89°43'57"E A Distance Of 723.7 Feet To The Point Of Beginning.
4. Begin At The Southeast Corner Of The Southwest 1/4 Of The Southwest 1/4 Of The Northwest 1/4 Of Section 33 And Run Due South A Distance Of 23.8 Feet, Thence Run N89°57'53"E A Distance Of 338.1 Feet, Thence Run S0°1'51"W A Distance Of 666.5 Feet, Thence Run S89°58'9"E A Distance Of 42.7 Feet, Thence Run Due North A Distance Of 659 Feet, Thence Run S89°59'52"E A Distance Of 947.3 Feet, Thence Run Due North A Distance Of 31.2 Feet, Thence Run Due West A Distance Of 1327.8 Feet To The Point Of Beginning.

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

Sky Ranch

Township 14 South, Range 22 East

Commence From The Southeast Corner Of Section 32 And Run 1650.8 Feet N0°3'40"E To The Point Of Beginning, Thence Run N0°1'36"E A Distance Of 992.1 Feet, Thence Run N89°57'35"W A Distance Of 485.6 Feet, Thence Run N13°46'58"E A Distance Of 1358.0 Feet, Thence Run S89°57'4"E A Distance Of 5143.1 Feet, Thence Run N0°18'2"E A Distance Of 1143.2 Feet, Thence Run Due East A Distance Of 303.3 Feet, Thence Run S0°25'51"W A Distance Of 1143.8 Feet, Thence Run S89°52'50"E A Distance Of 32.0 Feet, Thence Run S0°20'15"W A Distance Of 2636.9 Feet, Thence Run Due West A Distance Of 1322.1 Feet, Thence Run S0°19'41"W A Distance Of 1291.9 Feet, Thence Run N89°43'44"W A Distance Of 2647.0 Feet, Thence Run N0°2'0"E A Distance Of 1947.0 Feet, Thence Run N89°56'35"W A Distance Of 324.4 Feet, Thence Run S0°1'51"W A Distance Of 325.3 Feet, Thence Run S89°56'50"W A Distance Of 999.0 To The Point Of Beginning.

Also,

Sw 1/4 Of The NW 1/4 Of The NW 1/4 Of Section 34

Less;

Commence From The Sw Corner Of Section 33 And Run 2177.8 Feet N85°16'48"E To The Point Of Beginning, Thence Run N0°3'34"E A Distance Of 418.3 Feet, Thence Run N89°48'29"E A Distance Of 477.3 Feet, Thence Run S0°6'55"W A Distance Of 482.9 Feet, Thence Run Due West A Distance Of 474.7 Feet To The Point Of Beginning.

Less;

Commence From The Nw Corner Of Section 33 And Run 2765.8 Feet S42°13'38"E To The Point Of Beginning, Thence Run Due East A Distance Of 128.9 Feet, Due South A Distance Of 264.3 Feet, Thence Run S89°58'22"W A Distance Of 129.0 Feet, Thence Run N0°1'58"E A Distance Of 264.0 Feet To The Point Of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Aqua Utilities Florida, Inc.
pursuant to
Certificate No. 346-W

to provide water service in Marion 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>
10471	12/23/81	810470-W	Original Certificate
12455	09/07/83	830283-W	Amendment
14000	01/14/85	840107-WU	Amendment
14178	03/14/85	850047-WU	Amendment
14474	06/17/85	850119-WU	Amendment
15294	10/24/85	850449-WU	Amendment
16487	08/19/86	860923-WU	Amendment
22978	05/24/90	900074-WU	Amendment
PSC-93-0343-FOF-WU	03/08/93	921071-WU	Amendment
PSC-94-0988-FOF-WU	08/15/94	930950-WU	Transfer/Amendment
PSC-99-1925-PAA-WU	09/28/99	981030-WU	Transfer/Amendment
PSC-99-2499-FOF-WU	12/21/99	981907-WU	Transfer of Majority Control
PSC-04-0715-FOF-WS	07/21/04	040359-WS	Transfer
PSC-06-0973-FOF-WS	11/22/06	060643-WS	Reorganization/Name Change
*	*	080541-WU	Amendment

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