



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: MAY 4, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYLOR)

FROM: DIVISION OF WATER AND WASTEWATER (REDEMANN, MESSER) *RPR*
DIVISION OF LEGAL SERVICES (FUDGE) *JF RS*

RE: DOCKET NO. 991681-WU - APPLICATION FOR AMENDMENT OF
CERTIFICATE NO. 363-W TO ADD TERRITORY IN MARION COUNTY BY
SUNSHINE UTILITIES OF CENTRAL FLORIDA, INC.
COUNTY: MARION

AGENDA: MAY 16, 2000 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\991681.RCM

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RECORDS AND REPORTING

CASE BACKGROUND

Sunshine Utilities of Central Florida, Inc. (Sunshine Utilities or utility) is a Class B utility which provides water service to approximately 1316 customers in Marion County. The wastewater service is provided by septic tanks. The utility's 1998 annual report shows an annual operating revenue of \$725,690 and a net operating income of \$55,704.

Pursuant to Section 367.045, Florida Statutes, on November 5, 1999, the utility applied for an amendment to Water Certificate No. 363-W to correct a previous territory description and to add a small subdivision. On February 28, 2000, the utility filed a second application which corrected the territory description and properly deleted certain incorrect territory.

Staff has authority to administratively approve applications for amendment pursuant to APM 2.07(c)(12), when they are filed and

DOCUMENT NUMBER-DATE

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processed in accordance with Chapter 367, Florida Statutes, and no protests have been filed. This case is being brought to the attention of the Commission because the utility is currently serving customers in the proposed territory, which is addressed in Issue 1.

DISCUSSION OF ISSUES

ISSUE 1: Should Sunshine Utilities of Central Florida, Inc., be ordered to show cause, in writing within 21 days, why it should not be fined for serving outside its certificated territory in apparent violation of Section 367.045(2), Florida Statutes?

RECOMMENDATION: No, a show cause proceeding should not be initiated. (FUDGE, REDEMANN)

STAFF ANALYSIS: Sunshine is attempting to correct the Oakhaven territory description that had been previously approved by Order No. 14978, issued September 20, 1985, in Docket No. 840089-WU. The utility believes that the original description was incorrect and determined the error when reviewing its maps. The simplest way to correct the error, is to delete all the territory referring to the Oakhaven subdivision and add the correct territory of the Oakhaven subdivision. Additionally Sunshine is filing for an extension to include a small subdivision known as Evans Acres. No customers are being served in Evans Acres at this time.

The additional territory includes customers in Oakhaven that Sunshine has been serving since 1985. By serving customers outside of its certificated territory, Sunshine is in apparent violation of Section 367.045(2), Florida Statutes, which states:

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), Florida Statutes, 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, Florida Statutes, or any lawful rule or order of the Commission.

DOCKET NO. 991681-wU
DATE: May 4, 2000

Utilities are charged with the knowledge of the Commission's rules and statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, entitled 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

By serving outside of its certificated territory, Sunshine's act was "willful" in the sense intended by Section 367.161, Florida Statutes. Although the utility's failure to comply with Section 367.045(2), Florida Statutes, could be said to be willful, staff believes that the utility's actions do not rise in these circumstances to the level which warrants the initiation of a show cause proceeding. As soon as the utility became aware of the inaccurate territory description, it immediately filed this application to correct it. Therefore, staff recommends that the Commission not order Sunshine to show cause for its apparent violation of Section 367.045(2), Florida Statutes.

ISSUE 2: Should Sunshine Utilities of Central Florida, Inc.'s application for amendment of Water Certificate No. 363-W be granted?

RECOMMENDATION: Yes, Sunshine Utilities of Central Florida, Inc.'s application for an amendment to expand its territory should be granted, as described in Attachment A. The incorrect territory description, as described in Attachment A to Sunshine Utilities of Central Florida, Inc. Water Certificate No. 363-W should be deleted. Sunshine Utilities of Central Florida, Inc. should charge the customers in the territory added herein the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. (REDEMANN, MESSER)

STAFF ANALYSIS: On November 5, 1999, the utility applied for an amendment to Water Certificate No. 363-W in Marion County, Florida. The purpose of this amendment application is to correct a territory description that was part of Order No. 14978, issued September 20, 1985 in Docket No. 840089-WU and to provide service to a small subdivision called Evans Acres.

On February 28, 2000, the utility filed a second application to properly delete the incorrect area, revised the incorrect territory description which was noticed in this proceeding, and renoticed. This second application is included in this docket. As discussed in Issue 1, the utility is already serving this area.

These applications are in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning applications for amendment of certificate. These applications contain checks in the amount of \$600 which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.036(1)(d), Florida Administrative Code.

Adequate service territory and system maps and territory descriptions have been provided as prescribed by Rule 25-30.036(1)(e), (f) and (i), Florida Administrative Code. A description of the territory to be deleted and added by the utility is appended to this recommendation as Attachment A. The utility has filed an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. The local planning agency was provided notice of the application and did not file a protest to the amendment. The utility states that its water service requirements, in all of its current and proposed service territories, is or will be consistent with the local comprehensive plan as approved by the Department of Community Affairs. The utility states that it has been providing and can continually provide service to the proposed service area.

The utility indicates that this extension will not have a substantial impact on the monthly rates and charges, since there will be only six new customers in the Evans Acres Subdivision. This project will not be financed. The utility will receive impact fees. Sunshine will extend the line across the road to serve this subdivision.

The utility's operator, Mr. Kelvin Edun, holds a Class C drinking water permit, and his license number is C-7459. The Department of Environmental Protection has no outstanding notices of violation issued for this system. The water system produces on average 27,000 gallons per day (gpd) of potable water. The water treatment plant's maximum design capacity is 288,000 gpd. Therefore, it is apparent that the utility can continue to provide water service to its existing customers and the small subdivision called Evans acres. Consequently, staff believes the utility has demonstrated the financial and technical expertise to provide quality service to these customers.

Staff recommends the rates and charges approved by the Commission be applied to customers in the new service territory. The utility has filed revised tariff sheets incorporating the additional territory into its tariff and returned its certificate for entry reflecting the additional territory.

Based on the above information, staff recommends that Sunshine Utilities of Central Florida, Inc.'s application for an amendment to expand its territory should be granted, as described in Attachment A. The incorrect territory description, as described in Attachment A to Sunshine Utilities of Central Florida, Inc. Water Certificate No. 363-W should be deleted.

SUNSHINE UTILITIES OF CENTRAL FLORIDA, INC.

TERRITORY DESCRIPTION

WATER SERVICE AREA

MARION COUNTY

AREA TO BE DELETED

Part of Order No. 14978, issued 9/20/85 in Docket No. 840089-WU,
Oakhaven

Township 14 South, Range 21 East
Section 36

The South 7 1/2 Chains of the South 1/2 of the NE 1/4 lying West of
Alternate U.S. 441 (Old Dixie Highway)

Except - Commencing at the intersection of the Westerly ROW line of
Alternate US 441 and the quarter section line running East and
West, said Point being 1,112 feet West from the quarter section
corner of the East Boundary of said Section 36; thence run
Northwesterly 390 feet along the Westerly R-O-W line of U.S. 441
(Alternate); thence West 104 feet; thence South 31°47'00" East a
distance of 323 feet to the quarter section line; thence East along
the quarter section line a distance of 123 feet to the Point of
Beginning.

AREA TO BE ADDED

Oakhaven and Evans Acres

Township 14 South, Range 21 East, Section 25
Township 14 South, Range 21 East, Section 36

The Southeast 1/4 of the Southwest 1/4 of Section 25 and the
Northeast 1/4 of the Northeast 1/4 of the Northwest 1/4 of Section
36 and the East 1/3 of the Southeast 1/4 of the Northwest 1/4 of
Section 36 and the West 1/2 of the Northeast 1/4 of Section 36 and
Commencing at the Northeast corner of the Southeast 1/4 of Section
36; thence South 89°10'00" West along the North boundary of said SE
1/4 a distance of 2,014.05 feet; thence South 00°38'35" East 25.00
feet to a point on the Westerly ROW line of NW 20th Ave. (Gardner

DOCKET NO. 991681-wU

DATE: May 4, 2000

Ave 50.00 feet wide) and the Point of Beginning; thence South $00^{\circ}38'35''$ East along said Westerly ROW line 152.96 feet to a point on the South Boundary of Lot 1 Block A of "Home Acres"; said point also being on the North Boundary of Lot 2, Block A of said "Home Acres"; thence South $89^{\circ}09'01''$ West along said South boundary of lot 1 and along said North boundary of Lot 2, 611.86 feet to a point on the West boundary of said "Home Acres"; thence North $00^{\circ}13'06''$ West along said West boundary 153.14 feet to a point on the South ROW line of NW 42 Street (Blowers Lane 50.00 feet wide) thence North $89^{\circ}10'00''$ East along said South ROW line 610.73 feet to the Point of Beginning.

DOCKET NO. 991681-wU
DATE: May 4, 2000

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, if staff's recommendations in Issues 1 and 2 are approved, no further action is required and the docket should be closed. (FUDGE)

STAFF ANALYSIS: If staff's recommendations in Issues 1 and 2 are approved, no further action is required and the docket should be closed.