

RECEIVED--FPSC

State of Florida



09 MAR Public Service Commission

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

-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 (Walden)  
Office of the General Counsel (Saylor)

*AW*  
*ED*  
*ES*  
*SB*  
*W*  
*TS*

**RE:** Docket No. 080534-WS – Application for quick-take amendment and application for amendment of Certificate Nos. 209-W and 154-S to extend water and wastewater services to certain territory (Jasmine Lakes) in Pasco County, by Aqua Utilities Florida, Inc.  
County: Pasco

**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\080534.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. This system was originally granted a certificate in 1972,<sup>1</sup> and was transferred to Aqua in Docket No. 040951-WS. The Utility's service area in Pasco County is in the Southwest Florida Water Management District.

<sup>1</sup> In Docket Nos. 72656-W and 72657-S, In re: Application of Jasmine Lakes Services, Inc., for a certificate to operate its existing water and sewer system in Pasco County.

DOCUMENT NUMBER-DATE

02645 MAR 26 8

FPSC-COMMISSION CLERK

On August 12, 2008, the Utility filed both its initial application and completed follow-up application for a "Quick take" amendment to Certificate Nos. 209-W and 154-S for certain territory at its Jasmine Lakes system in Pasco County, pursuant to Rule 25-30.036(2), Florida Administrative Code (F.A.C.). The Utility provides water service to approximately 1500 customers at this system, and two of these customers were recently determined to be outside of its service territory. It was discovered during the 2006 rate case (Docket No. 060368-WS) that the utility was serving outside its territory at this system. Service to these two customers occurred sometime between January 2002 and May 2003. The Utility has indicated that a petition for certificate amendments to serve these customers was inadvertently overlooked.

On September 12, 2008, Pasco County objected to Aqua's application. Aqua responded to Pasco County on September 19, 2008, and filed a corrected legal description with the Commission. On October 10, 2008, Pasco County withdrew its objection. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes (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, F.S.?

**Recommendation:** No. A show cause proceeding should not be initiated. (Sayler)

**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 its Jasmine Lakes system in Pasco 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. As a result of staff's review in a recent rate case, Docket No. 060368-WS, several service areas were found to have customers outside the Commission approved service area. When the error was discovered, Aqua began preparing 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's "Quick Take" application to amend Certificate Nos. 209-W and 154-S?

**Recommendation:** Yes, the Commission should acknowledge Aqua's amendment application to expand its water and wastewater territory. The proposed territory is described in Attachment A. The resultant order should serve as Aqua's amended certificate and it should be retained by the Utility. The existing charges contained in its tariff should be applied to the customers in the new territory until it is authorized by the Commission to change them 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. (Walden, Sayler)

**Staff Analysis:** 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 existing certificates 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.

On August 12, 2008, the Utility filed both its initial application and completed follow-up application for a "Quick Take" amendment to Certificate Nos. 209-W and 154-S for new territory in Pasco County, pursuant to Rule 25-30.036(2), F.A.C. The proposed territory, while now serving two customers, will include six ERCs. The applicant began providing service to the current two customers between January 2002 and May 2003. 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.

One objection to the application was filed and subsequently withdrawn. No further objections have been received and the time for filing such has expired. The Utility has filed revised tariff sheets incorporating the additional territory into its tariff, which will require some changes. From the recent rate case in Docket No. 080121-WS, staff is aware of an outstanding warning letter from the Department of Environmental Protection involving the wastewater ponds. While this issue is being resolved, it appears that the Utility has sufficient capacity to serve the existing and proposed customers.

Based on the above information, staff believes it is in the public interest to acknowledge the "Quick Take" amendment application filed by Aqua to amend its territory to reflect the area described in Attachment A. Also, the existing charges contained in its tariff should be applied to the customers in the new service territory until it is authorized by the Commission to change them 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. The Utility has indicated that throughout this time period, the calculation of the RAFs for Aqua was inclusive of all of these customers.

Docket No. 080534-WS

Date: March 26, 2009

**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. (Saylor)

**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.  
Pasco County  
Description of Water and Wastewater Territory Added

Jasmine Lakes

In Township 25 South, Range 16 East, Pasco County, Florida

In Section 15:

Commence at the Northwest corner of Section 15 and thence run  $S0^{\circ}50'23''E$  a distance of 1680.2 feet to the Point of Beginning; thence run  $S89^{\circ}48'12''E$  a distance of 1280.0 feet; thence run  $N00^{\circ}10'28''E$  a distance of 338.9 feet; thence run  $N89^{\circ}50'0''W$  a distance of 1247.2 feet; thence run southwesterly along the eastern side of the right of way of U. S. Highway No. 19, a distance of 267.8 feet to the Point of Beginning.

Aqua Utilities Florida, Inc.  
Pasco County  
Description of Composite Water and Wastewater Territory

Jasmine Lakes

In Township 25 South, Range 16 East, Pasco County, Florida

In Sections 14, 15, And 16:

Commence at the Northeast corner of Section 16 and run S02°29'30"E a distance of 1,345.0 feet to the Point of Beginning; thence run S89°55'16"E a distance of 5,177.9 feet; thence run S00°16'01"W a distance of 1,327.6 feet; thence run S89°51'14"E a distance of 636.7 feet; thence run S03°00'18"W a distance of 2,640.8 feet; thence run N89°48'11"W a distance of 472.5 feet; thence run S89°55'38"W a distance of 2,652.0 feet; thence run N00°09'12"E a distance of 1,645.3 feet; thence run due west a distance of 3,222.1 feet; thence run northwesterly along the east right of way line of U. S. Highway No. 19, a distance of 2,442.8 feet to the Point of Beginning.

**FLORIDA PUBLIC SERVICE COMMISSION**  
**authorizes**  
**Aqua Utilities Florida, Inc.**  
**pursuant to**  
**Certificate Number 209-W**

to provide water service in Pasco 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>
5605	12/27/72	C-72656-W	Original Certificate
6506	02/11/75	74090-W	Original Certificate
6506-A	06/29/84	74090-W	Territory Correction
PSC-04-0715-FOF-WS	07/21/04	040359-WS	Name Change
18243	10/05/87	870572-WS	Transfer
20140	10/10/88	880472-WS	Transfer
21146	04/28/89	890202-WS	Amendment
23728	11/07/90	900291-WS	Transfer
PSC-97-0427-FOF-WS	04/16/97	970028-WS	Name Change
PSC-99-0482-FOF-WS	03/08/99	981780-WS	Majority Control
PSC-05-1242-PAA-WS	12/20/05	040951-WS	Transfer
PSC-06-0973-FOF-WS	11/22/06	060643-WS	Name Change
*	*	080534-WS	Amendment

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



**FLORIDA PUBLIC SERVICE COMMISSION**  
**authorizes**  
**Aqua Utilities Florida, Inc.**  
**pursuant to**  
**Certificate Number 154-S**

to provide wastewater service in Pasco 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>
5605	12/27/72	C-72657-S	Original Certificate
6506	02/11/75	74091-S	Original Certificate
6506-A	06/29/84	74091-S	Territory Correction
18243	10/05/87	870572-WS	Transfer
20140	10/10/88	880472-WS	Transfer
21146	04/28/89	890202-WS	Amendment
23728	11/07/90	900291-WS	Transfer
PSC-97-0427-FOF-WS	04/16/97	970028-WS	Name Change
PSC-99-0482-FOF-WS	03/08/99	981780-WS	Majority Control
PSC-04-0715-FOF-WS	07/21/04	040359-WS	Name Change
PSC-05-1242-PAA-WS	12/20/05	040951-WS	Transfer
PSC-06-0973-FOF-WS	11/22/06	060643-WS	Name Change
*	*	080534-WS	Amendment

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