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State of Florida



09 MAR 2009 Public Service Commission

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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 (Rieger)
Office of the General Counsel (Saylor)

[Handwritten signatures and initials: Rieger, Saylor, and others]

RE: Docket No. 080535-WU – Application for quick-take amendment and application for amendment of Certificate No. 053-W to extend water service to certain territory (Lake Osborne) in Palm Beach County, by Aqua Utilities Florida, Inc. County: Palm Beach

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\080535.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. 5298, issued January 12, 1972, the Commission granted Water Certificate No. 053-W for the Lake Osborne service area.¹ There has also been multiple certificate transfer activities that have occurred over the years (see Attachment A, page 3 of 3). On August 12, 2008, the Utility filed both its initial application and completed follow-up application for a “Quick take” amendment to

¹ In Docket No. C-71484-W, In re: Application of the Estate of Henry Levin, Deceased; Estate of Morris Becker, Deceased; and Alvin L. Brown and Donald L. Brown, Partners; d/b/a Lake Osborne Utilities Company for a certificate to operate and existing water system in Palm Beach County.

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FPSC-COMMISSION CLERK

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Certificate 053-W for certain territory at its Lake Osborne system in Palm Beach County, pursuant to Rule 25-30.036(2), Florida Administrative Code (F.A.C.). The Utility provides water service to approximately 436 customers at its Lake Osborne system, which is in the South Florida Water Management District. Bulk water is purchased from the City of Lake Worth. Seven of these customers were recently determined to be outside of its service territory. The Utility has indicated that service to these residential customers occurred sometime between 2001 and 2003. The Utility has indicated that a petition for certificate amendments to serve these customers was overlooked. It was discovered during the 2006 rate case (Docket No. 060368-WS) that the Utility was serving outside its territory at this system. The proposed amended area is contiguous to Aqua's existing Commission approved service territory. On September 11, 2008, the City of Lake Worth (City) objected to Aqua's application. After staff contacted the City about its objection, it was discovered that the City was not objecting to the expansion of Aqua's Commission approved Certificated service territory, which is the subject of this amendment application. Instead, the city's objection concerned a territorial dispute, dating back to the early 1970's. At this time, the City has indicated that it will not pursue its objection in this docket. 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, Florida Statutes?

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 amended certificate of authorization for its Lake Osborne system in Palm Beach 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 acknowledge Aqua's "Quick Take" application to amend Certificate 053-W?

Recommendation: Yes, the Commission should acknowledge Aqua's amendment application to expand its 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 approving the amendment. (Rieger, 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 053-W for new territory in Palm Beach County, pursuant to Rule 25-30.036(2), F.A.C. The Utility has indicated that service to the seven residential customers occurred sometime between 2001 and 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.

A description of the proposed territory and a list of orders identifying the Utility's authorized service territory are appended to this recommendation as Attachment A. In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.036(2), F.A.C. As mentioned in the case background, the City of Lake Worth filed a protest to the application that has since been resolved. No other objections to the application have been received and the time for filing such has expired. Staff has contacted the Palm Beach County Health Department and learned that there are no outstanding notices of violation issued for Aqua's Lake Osborne water distribution system. It appears that the Utility has sufficient capacity to serve the existing and proposed customers. The Utility has filed revised tariff sheets incorporating the additional territory 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 thirty days from the date of the Commission order approving the amendment to file revised tariff sheets that incorporate the additional territory.

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, existing charges contained in Aqua's 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. 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 indicated that throughout this time period, the calculation of the annual (RAFs) for Aqua was inclusive of all of these customers. In addition, the Utility should be ordered to file revised tariff

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sheets that incorporate the additional territory 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. (Sayler)

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.
Palm Beach County
Description of Water Territory Added

Lake Osborne

Township 44 South, Range 43 East

Establish The Point Of Beginning At The Southwest Corner Of Section 33 And Run N00°14'01"E A Distance Of 1,294.7 Feet, Thence Run S87°51'53"E A Distance Of 49.2 Feet, Thence Run Due South A Distance Of 531.3 Feet, Thence Run S88°18'14"E A Distance Of 450.9 Feet, Thence Run S02°33'43"W A Distance Of 149.7 Feet, Thence Run N88°23'17"W A Distance Of 425.5 Feet, Thence Run S00°06'42"W A Distance Of 92.9 Feet, Thence Run S88°29'13"E A Distance Of 170.1 Feet, Thence Run S00°06'41"W A Distance Of 520.2 Feet, Thence Run N88°09'39"W A Distance Of 242.1 Feet To The Point Of Beginning.

Aqua Utilities Florida, Inc.
Palm Beach County
Composite Water Service Area

Lake Osborne

Township 44 South, Range 43 East

Commence At The Southwest Corner Of Section 33 And Run S88°09'39" E A Distance Of 242.1 Feet To The Point Of Beginning, Thence Run N88°25'00" W A Distance Of 1,148.3 Feet, Thence Run N79°36'46" W A Distance Of 153.2 Feet, Thence Run N47°39'31" E A Distance Of 36.5 Feet, Thence Run 5,675.7 Feet Along The Eastern Shoreline Of Lake Osborne To A Point Located N02°20'03" W A Distance Of 4,523.2 Feet From The Point Of Beginning, Thence Run S01°33'56" W A Distance Of 1,549.7 Feet, Thence Run S87°58'47" E A Distance Of 1,238.1 Feet, Thence Run S00°38'49" W A Distance Of 1,665.7 Feet, Thence Run N88°05'06" W A Distance Of 1,180.2 Feet, Thence Run Due South A Distance Of 531.3 Feet, Thence Run S88°18'14" E A Distance Of 450.9 Feet, Thence Run S02°33'43" W A Distance Of 149.7 Feet, Thence Run N88°23'17" W A Distance Of 425.5 Feet, Thence Run S00°06'42" W A Distance Of 92.9 Feet, Thence Run S88°29'13" E A Distance Of 170.1 Feet, Thence Run S00°06'41" W A Distance Of 520.2 Feet To The Point Of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Aqua Utilities Florida, Inc.
pursuant to
Certificate Number 053-W

to provide water service in Palm Beach 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>
5298	01/12/72	C-71484-W	Original Certificate
5434	05/30/72	72301-W	Transfer of Certificate
5538	10/03/72	T-72494-W	Transfer of Certificate
PSC-97-1149-FOF-WU	09/30/97	961535-WU	Transfer of Certificate
PSC-99-0483-FOF-WS	03/08/99	981508-WS	Transfer of Majority Control
PSC-04-0715-FOF-WS	07/21/04	040359-WS	Name Change
PSC-06-0973-FOF-WS	11/22/06	060643-WS	Reorganization/Name Change
*	*	080535-WU	Amendment

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