

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 950907-WU
Amendment of Certificate No.) ORDER NO. PSC-96-0165-FOF-WU
419-W to Add Territory in Marion) ISSUED: February 6, 1996
County by Residential Water)
Systems, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER AMENDING CERTIFICATE NO. 419-W TO
REFLECT ADDITIONAL TERRITORY
AND
CLOSING DOCKET

BY THE COMMISSION:

Background

Residential Water Systems, Inc. (Residential or utility) provides water service in Marion County and serves approximately 486 customers. The annual report for 1994 shows that the annual operating revenue for the system is \$113,267 and the net operating loss is \$6,314. Residential is a Class C utility under Commission jurisdiction.

On August 1, 1995, the utility applied for an amendment of Water Certificate No. 419-W in Marion County to extend its certificated territory to include territory that it has been servicing for several years. The oversight was discovered after the death of the company's president, Mr. Charles Finney. The applicant is currently providing water service to five residential subdivisions, three of which are outside the certificated territory.

No Show Cause Required

Pursuant to Section 367.045(2), Florida Statutes, a utility may not delete or extend its service area outside the area described in its certificate of authorization until it has obtained

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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.

After the owner's death, the new manager recognized that the utility was serving customers outside of its territory and subsequently filed the amendment application. Utilities are charged with the knowledge of the Commission's rules and statutes. 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). Thus, any intentional act, such as the utility's failure to obtain antecedent Commission approval to extend its service area outside the area described in its certificate of authorization, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled 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.

Failure to obtain the approval of the Commission prior to extending the service area outside the area described in the certificate of authorization is an apparent violation of Section 367.045(2), Florida Statutes. In this case, however, we find that Residential's apparent violation of Section 367.045(2), Florida Statutes, does not warrant that a show cause order be issued. First, the utility took the necessary steps to correct the violation once it was discovered. Second, the area in question was developed into three subdivisions which required water service. Residential distribution lines were adjacent to the new development which made the applicant the most logical candidate to provide service. The Commission received an informal complaint concerning the validity of the expansion request and notification of water turnoffs during construction. The customers later decided not to pursue the issue.

Application

On August 1, 1995, Residential filed its application for amendment of its water certificate to include additional territory in Marion County. Except as noted above, the application is in

compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. The application contains a check in the amount of \$500, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided a copy of a warranty deed which provides for the continued use of the land as required by Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(3)(e), (f) and (i), Florida Administrative Code. A description of the territory is appended to this Order. The utility has submitted 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. No formal objections to the notice of application have been received and the time for filing such has expired. The local planning agency was provided notice of the application and did not file a protest.

The president/owner, Ms. Elaine Finney, has served as vice president assisting in the daily operation of the plant since 1983. In addition, the applicant has contracted the services of Mr. Charles de Menzes, manager of Tradewinds Utilities, Inc. (a Commission-regulated utility), to assist in the management of the plant. Historically, the utility has demonstrated the capacity and the financial and technical expertise to provide service to these customers.

Based on the above information, we find that it is in the public interest to grant Residential's application for amendment of Certificate No. 419-W to include the additional territory. The utility misplaced its certificate and requested that a replacement be issued so that the entry would include the additional territory and the filed revised tariff sheets would reflect the amended territory description.

Rates and Charges

Residential shall charge its customers the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding.

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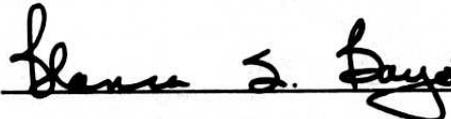
It is therefore,

ORDERED by the Florida Public Service Commission that Certificate No. 419-W, held by Residential Water Systems, Inc., 3041 NE Jax Rd., Unit #8, Ocala, Florida 34470, is hereby amended to include the territory described in Attachment A of this Order. It is further

ORDERED that Residential Water Systems, Inc. shall charge those customers in the territory added herein the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that Docket No. 950196-WU is hereby closed.

By ORDER of the Florida Public Service Commission, this 6th day of February, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MTR

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

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ATTACHMENT A

RESIDENTIAL WATER SYSTEMS, INC.

Marion County

Edgewood Subdivision - Water Service Area

Township 16 South, Range 22 East

Section 11

The NW 1/4 of the SE 1/4 less the South 330 feet of Section 11.

Country Estates Buffington Subdivision - Water Service Area

Township 16 South, Range 22 East

Section 2

The NW 1/4 of SE 1/4 of NE 1/4 and SW 1/4 of NW 1/4 of NE 1/4 of Section 2.

Wineberry Subdivision - Water Service Area

Township 16 South, Range 22 East

Section 2

The N 1/2 of SW 1/4 of Section 2