

State of Florida



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Public Service Commission
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 TALLAHASSEE, FLORIDA 32399-0850

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: January 27, 2011

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Walden) *AWD*
 Office of the General Counsel (A. Williams) *APW JSC* *CR/EB* *[Signature]*

RE: Docket No. 090441-WU – Application for amendment of Certificate No. 430-W to add territory in Duval County by Neighborhood Utilities, Inc.
 County(ies): Duval

AGENDA: 02/08/11 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\090441.RCM.DOC

Case Background

On September 4, 2009, Neighborhood Utilities, Inc. (Neighborhood or Utility) filed its application for amendment of Certificate No. 430-W to add and delete territory to reflect land areas that were exchanged with Jacksonville Electric Authority (JEA) for the provision of water service. The territory swap was discovered by the Commission staff during a field inspection for the Utility's staff-assisted rate case in Docket No. 090060-WU. The application was not complete when filed and considerable time passed while the Utility filed additional information to complete the minimum filing requirements.

Neighborhood is a Class C utility providing water service to about 430 customers in Duval County. The Utility's 2009 annual report shows gross revenue of \$86,862 and a net

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operating loss of \$26,254. The Utility's service area is in the St. Johns River Water Management District. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve Neighborhood's application for amendment of Certificate No. 430-W?

Recommendation: Yes. The Commission should approve the application for amendment of Certificate No. 430-W filed by Neighborhood Utilities, Inc. to include new territory and delete other territory as reflected on Attachment A. The resultant order should serve as Neighborhood's amended certificate and should be retained by the Utility. The Utility should charge the customers in the amended territory the rates and charges contained in its current tariff until authorized to be changed by the Commission. (Walden)

Staff Analysis: On September 4, 2009, the Utility applied for an amendment of Certificate No. 430-W in Duval County, Florida, based upon a Memorandum of Agreement with JEA from 2003. Vacant lots in Cherokee Cove that were originally in Neighborhood's certificated area will now be served by JEA and 51 lots formerly planned to receive service from JEA will now receive service from Neighborhood. The exchange of lots for service was based upon the ability of Neighborhood and JEA to serve the lots involved with facilities already in place. All the property involved was undeveloped at the time of the exchange.

The application is in compliance with the governing statute, Section 367.045, F.S., and other pertinent statutes and administrative rules concerning applications for amendment of certificate. The application contains proof of compliance with the noticing provisions in Rule 25-30.030, Florida Administrative Code, as well as noticing to the lot owners, not yet customers, who will now be in the Neighborhood service area. No objections were received and the time for such has expired. The Utility's water treatment plant has sufficient capacity to serve the amended area.

Staff believes it is in the public interest to approve the application filed by Neighborhood to amend its water certificate to include new territory and delete other territory as shown on Attachment A. The resultant Commission order should serve as Neighborhood's amended certificate and should be retained by the Utility. The Utility should charge the customers in the amended territory the rates and charges contained in its current tariff until authorized to be changed by the Commission.

Issue 2: Should Neighborhood Utilities, 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. (A. Williams)

Staff Analysis: As stated in the case background, Neighborhood 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.”

Although Neighborhood’s failure to obtain an amended certificate of authorization from the Commission for its water system in Duval County prior to serving outside of its certificated area is an apparent violation of Section 367.045(2), F.S., staff does not believe that the violation of Section 367.045, F.S., rises in these circumstances to the level which warrants the initiation of a show cause proceeding. 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). In its application, the Utility explained that 51 lots were swapped with JEA. When staff brought to the Utility’s attention that it was serving outside of its certificated area, Neighborhood began preparing the instant application to add the new territory to its service area and delete the area that JEA will serve. Therefore, staff recommends that the Commission not order Neighborhood to show cause why it should not be fined for failure to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

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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. (A. Williams)

Staff Analysis: If Issues 1 and 2 are approved, no further action is required, and the docket should be closed.

NEIGHBORHOOD UTILITIES, INC.
DESCRIPTION OF WATER TERRITORY TO BE ADDED
DUVAL COUNTY

In Township 2 South, Range 25 East:

Section 31

Area name: NU-1. A portion of Tracts 13 and 14, Block 3, in Section 31 as shown on the plat of Jacksonville Heights, as recorded in Plat Book 5, Page 93 of the current public records of Duval County, Florida, more particularly described as follows:

Commence at the Southwest corner of said Section 31; thence N 89° 42' 31" E along the south line of said Section 31, a distance of 1,224.03 feet to the Southwest corner of Tract 13, Block 3, Jacksonville Heights to the Point of Beginning; thence continue along said south line of Section 31, N 89° 42' 30" E a distance of 663.36 feet; thence N 00° 50' 36" E a distance of 664.62 feet; thence S 89° 46' 36" W a distance of 664.95 feet; thence S 00° 47' 27" W a distance of 665.40 feet to the Point of Beginning. Containing 10.14 acres.

In Township 2 South, Range 25 East and in Township 3 South, Range 25 East:

Area name: NU-2. A portion of Tracts 1 through 6, inclusive, Tracts 10 through 14, Block 3, and Tracts 5 through 8, inclusive Tracts 9, 11, and 12, Block 4, in Section 31, Township 2 South, Range 25 East, together with a portion of Tracts 6 and 7, Block 2, in Section 6, Township 3 South, Range 25 East as shown on the plat of Jacksonville Heights, as recorded in Plat Book 5, Page 93 of the current public records of Duval County, Florida, more particularly described as follows:

Commence at the Southwest corner of said Section 31; thence N 89° 42' 31" E along the south line of said Section 31, a distance of 664.35 feet to the Southwest corner of Tract 11, Block 3, Jacksonville Heights, to the Point of Beginning; thence N 00° 44' 25" E a distance of 166.54 feet; thence S 89° 43' 33" W a distance of 614.49 feet; thence S 00° 39' 57" W a distance of 327.10 feet; thence N 89° 42' 31" E a distance of 248.32 feet; thence S 00° 38' 40" W a distance of 173.91 feet; thence N 89° 17' 13" E a distance of 364.98 feet; thence S 00° 39' 10" W a distance of 516.95 feet; thence N 84° 58' 30" E a distance of 172.65 feet; thence N 00° 40' 10" E a distance of 222.00 feet; thence N 84° 58' 30" E a distance of 160.00 feet; thence N 00° 41' 18" E a distance of 599.10 feet; thence S 89° 42' 31" W a distance of 330.34 feet to the Point of Beginning. Containing 11.61 acres.

NEIGHBORHOOD UTILITIES, INC.
DESCRIPTION OF WATER TERRITORY TO BE DELETED
DUVAL COUNTY

In Township 2 South, Range 25 East:

Section 31

Area name: JEA-1. A portion of Tracts 11 and 12, Block 3, in Section 31, as shown on the plat of Jacksonville Heights, as recorded in Plat Book 5, Page 93 of the current public records of Duval County, Florida, more particularly described as follows:

Commence at the Southwest corner of said Section 31; thence N 89° 42' 31" E along the south line of said Section 31, a distance of 1,224.03 feet to the Southwest corner of Tract 13, Block 3, Jacksonville Heights, thence N 00° 47' 27" E along the west line of said Tract 13 a distance of 861.76 feet to the Point of Beginning; thence N 55° 09' 07" W a distance of 66.88 feet; thence N 89° 18' 56" W a distance of 219.61 feet; thence N 00° 46' 00" E a distance of 65.71 feet; thence N 89° 15' 41" W a distance of 110.00 feet; thence N 00° 43' 08" E a distance of 275.01 feet; thence N 89° 50' 42" E a distance of 155.39 feet; thence N 00° 01' 10" E a distance of 135.00 feet; thence N 89° 50' 42" E a distance of 230.97 feet; thence S 00° 47' 27" W a distance of 519.05 feet to the Point of Beginning. Containing 3.61 acres.

Area name: JEA-2. A portion of Tracts 9, 11, and 12, plus all of Tract 10, Block 4, in Section 31, as shown on the plat of Jacksonville Heights, as recorded in Plat Book 5, Page 93 of the current public records of Duval County, Florida, more particularly described as follows:

Commence at the Southwest corner of said Section 31; thence N 89° 42' 31" E along the south line of said Section 31, a distance of 2,657.56 feet to the Southwest corner of Tract 11, Block 4, Jacksonville Heights, to the Point of Beginning; thence N 00° 53' 47" E a distance of 1327.69 feet; thence S 44° 38' 49" E a distance of 1,856.48 feet; thence S 89° 42' 31" W a distance of 1,325.40 feet to the Point of Beginning. Containing 20.19 acres.

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FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Neighborhood Utilities, Inc.
pursuant to
Certificate Number 430-W

to provide water service in Duval 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, canceled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
13723	09/28/84	840063-WU	Original Certificate
*		090441-WU	Amendment

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