

State of Florida



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: December 3, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Rieger)
Office of the General Counsel (Young)

RE: Docket No. 090417-WS – Application for amendment of Certificates 405-W and 342-S to add territory located in Marion County, by Tradewinds Utilities, Inc.

AGENDA: 12/15/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Argenziano

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\090417.RCM.DOC

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COMMISSION
CLERK

Case Background

Tradewinds Utilities, Inc. (Tradewinds or Utility) is a Class B water and wastewater utility in Marion County. By Order No. 12184, issued July 01, 1983, the Commission granted water and wastewater certificates to the Utility.¹ There have also been multiple certificate amendments that have occurred over the years (see Attachment A). On August 21, 2008, the Utility filed an application with the Commission to amend Certificate Nos. 405-W and 342-S to add water and wastewater territory in Marion County, pursuant to Section 367.045(2), Florida Statutes (F.S.). Tradewinds provides service to approximately 506 water connections and 279 wastewater connections. The Utility is in the St. Johns River Water Management District.

¹ Order No. 12184, issued July 01, 1983, in Docket No. 830110-WS, In re: Application of Tradewinds Utilities, Inc., for original water and sewer certificates to operate a utility in Marion County, Florida.

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This application was filed in response to a recent review of the Utility's service territory which revealed that the Utility is currently providing service to approximately 147 water connections and 146 wastewater connections located outside its certificated territory. The Utility has indicated that service to these residential and commercial customers started in 1992. Citing confusion over the resolution of previously docketed matters with the Commission, the Utility unintentionally failed to follow through with the amendment process. Shortly after it obtained notice that it was serving outside of its territory, Tradewinds filed its amendment of Certificate Nos. 405-W and 342-S to extend water and wastewater service to include those customers it is already serving. The proposed amended areas are located in close proximity to Tradewinds' existing Commission approved service territories. The Commission has jurisdiction for the amendment application pursuant to Section 367.045, F.S.

Discussion of Issues

Issue 1: Should Tradewinds 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, Florida Statutes?

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

Staff Analysis: As stated in the case background, Tradewinds Utilities, Inc., is serving customers outside of its certificated water and wastewater territories in apparent violation of Section 367.045(2), F.S. 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. Utilities are charged with the knowledge of the Commission's statutes and rules. Thus, any intentional act, such as Tradewinds providing water service to the public for compensation since 1992, without first obtaining a certificate of authorization from the Commission, would meet the standard for a "willful violation" of Section 357.161(1), 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). Additionally, "it 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).

Although Tradewinds' failure to obtain an amended certificate of authorization 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, Tradewinds filed the instant application to correct the mistake and include the territory to its service area. Additionally, the Utility has paid regulatory assessment fees (RAFs) on 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 Tradewinds to show cause for failure to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

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Issue 2: Should the Commission approve Tradewinds' application to amend Certificate Nos. 405-W and 342-S?

Recommendation: Yes. The Commission should approve Tradewinds' application for amendment of Certificate Nos. 405-W and 342-S to include territory as reflected in Attachment A. The resultant order should serve as Tradewinds' amended certificates and should be retained by the Utility. The Utility should charge the customers in the territory added herein the rates and charges contained in its current tariff until authorized to change by the Commission. (Rieger, Young)

Staff Analysis: This application is in compliance with the governing statute, Section 367.045, F. S., and Rule 25-30.036, F.A.C. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C.

Staff believes that the Utility has demonstrated its ability to serve the proposed extended areas and that it has the necessary financial and technical expertise to do so. In addition, the Utility has indicated that its current water and wastewater systems have sufficient capacity to serve the proposed areas. Staff has contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation issued for Tradewinds' water and wastewater treatment facilities.

The Utility also provided verification of a deed to the water treatment plant sites. Adequate service territory maps and territory descriptions have also been provided. No objections to the application have been received and the time for filing such has expired. The Utility is currently providing service to approximately 147 water connections and 146 wastewater connections located outside its certificated territory. The Utility has indicated that service to these residential and commercial customers started in 1992. Until recently, the Utility had assumed that the proposed areas had always been within the certificated areas authorized by the Commission. The Utility has indicated that throughout this time period, the calculation of the annual RAFs for Tradewinds was inclusive of all of these customers. The Utility has filed revised tariff sheets incorporating the additional territories into its tariff.

Based on the foregoing, staff believes it is in the public interest to approve the application filed by Tradewinds to amend its territory to reflect the area described in Attachment A. Composite territory descriptions which reflect the combined existing and amended areas are also included in Attachment A. The resultant order should serve as Tradewinds' amended certificates and should be retained by the Utility. The Utility should charge the customers in the territory added herein the rates and charges contained in the current tariff until authorized to change by the Commission. In addition, the Utility should be ordered to file revised tariff sheets that incorporate the additional territories within thirty 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. (Young)

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.

Tradewinds Utilities, Inc.
Marion County
Description of Water and Wastewater Territory Added

COMMENCE AT THE EAST 1/4 CORNER OF SECTION 34, TOWNSHIP 14 SOUTH, RANGE 22 EAST, THENCE ALONG THE SOUTH BOUNDARY OF THE NE 1/4 OF SECTION 34, S 89-40-40 W, 40.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF N.E. 36TH AVENUE AND THE POINT OF BEGINNING; THENCE ALONG SAID WEST RIGHT-OF-WAY, N 00-29-46 W, 361.13 FEET; THENCE S 89-42-07 W, 622.06 FEET; THENCE S 89-40-40 W, 1986.23 FEET TO A POINT ON THE WEST BOUNDARY OF THE NE 1/4 OF SECTION 34; THENCE S 00-23-43 E, 361.39 FEET TO THE S.W. CORNER OF THE NE 1/4 OF SECTION 34' THENCE ALONG THE WEST BOUNDARY OF THE SE 1/4 OF SECTION 34; S 00-23-43 E, 304.53 FEET; THENCE N 89-44-44 E, 2608.53 FEET TO THE WEST RIGHT-OF-WAY OF N.E. 36TH AVENUE; THENCE ALONG SAID RIGHT-OF-WAY N 00-19-04 W, 307.59 FEET TO THE POINT OF BEGINNING. EXCEPT ANY PART LYING IN THE SOUTH 2337.67 FEET OF THE SE 1/4.

CONTAINING 39.97 ACRES, MORE OR LESS. A.K.A. COUNTRYSIDE ESTATES FIRST ADDITION

SEC 34 TWP 14 RGE 22 COM AT THE SW COR OF SEC 34 TH N 89-38-51 E 30 FT TH N 00-02-32 W 30 FT TH CONT N 00-02-32 W 185 FT TO THE POB TH CONT N 00-02-32 W 513.88 FT TH N 89-39-32 E 636.05 FT TH S 00-07-48 E 105.03 FT TH N 89-38-51 E 666.22 FT TH S 00-13-07 E 593.70 FT TH S 89-38-51 W 1119.36 FT TH N 00-02-32 W 185 FT TH S 89-38-51 W 185 FT TO THE POB & EXC RD ROW

CONTAINING 13.36 ACRES, MORE OR LESS. A.K.A. PEARL BRITAIN PLAZA

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Tradewinds Utilities, Inc.
pursuant to
Certificate No. 405-W

to provide wastewater service in Marion 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 suspended, 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> |
|---------------------|--------------------|----------------------|--------------------|
| 12184 | 07/01/83 | 830110-WS | Original |
| 13238 | 04/27/84 | 840088-WU | Amendment |
| 18312 | 10/19/87 | 870212-WS | SARC |
| 19688 | 07/19/88 | 880552-WS | Amendment |
| PSC-93-0368-FOF-WS | 03/09/93 | 921260-WS | Deletion |
| PSC-93-0900-FOF-WS | 06/14/93 | 921260-WS | Amendment |
| PSC-98-0484-FOF-WS | 03/06/98 | 971174-WS | Amendment |
| * | * | 090417-WS | Amendment |

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

FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Tradewinds Utilities, Inc.
pursuant to
Certificate No. 342-S

to provide wastewater service in Marion 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 suspended, 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> |
|---------------------|--------------------|----------------------|--------------------|
| 12184 | 07/01/83 | 830110-WS | Original |
| 18312 | 10/19/87 | 870212-WS | SARC |
| 19688 | 07/19/88 | 880552-WS | Amendment |
| PSC-93-0368-FOF-WS | 03/09/93 | 921260-WS | Deletion |
| PSC-93-0900-FOF-WS | 06/14/93 | 921260-WS | Amendment |
| PSC-98-0484-FOF-WS | 03/06/98 | 971174-WS | Amendment |
| * | * | 090417-WS | Amendment |

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