

FLORIDA PUBLIC SERVICE COMMISSION  
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MEMORANDUM

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TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (COKER, REDEMANN) *WAW*  
DIVISION OF LEGAL SERVICES (CROSBY) *WAW*

RE: DOCKET NO. 970636-WU - APPLICATION FOR CERTIFICATE TO  
PROVIDE WATER SERVICE IN OSCEOLA COUNTY BY MORNINGSIDE  
UTILITY, INC.  
COUNTY: OSCEOLA

AGENDA: SEPTEMBER 23, 1997 - REGULAR AGENDA - PROPOSED AGENCY  
ACTION ON ISSUE 3 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

LOCATION OF FILE: S:\PSC\WAW\WP\970636WU.RCM

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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

CASE BACKGROUND

On May 28, 1997, Morningside Utility, Inc. (Morningside) filed its application for an original certificate pursuant to Section 367.045, Florida Statutes. Morningside is a Class C utility which provides water service to residential customers in Osceola County.

According to the application, the utility is serving 170 residential water customers. The utility submitted a 1996 income tax return for the corporation, this filing reported annual operating revenues of \$55,982, and a net operating income of \$10,448.

According to the application, the utility was established in 1983 by the developer, Schoolfield Properties. The application also states the utility system will serve a maximum of 187 customers when the system reaches build-out. The facilities of the utility include two wells and one water distribution system. The residents which receive potable water from Morningside, receive wastewater service from multiple septic tanks.

Morningside was never previously certificated, nor found to be exempt from Commission regulation. The present owner, Mr. George Devillers purchased the system in 1988 from Schoolfield Properties. The Commission became aware of this utility through contact with the Florida Department of Environmental Protection (DEP). Staff reviewed the operation of the utility system and determined the utility has capacity such that it does not qualify for an exemption pursuant to Section 367.022, Florida Statutes, (F.S.). The utility was advised to comply with Sections 367.031 and 367.045, F.S. Morningside submitted an application for certificate on May 28, 1997. The utility's application for a Water Certificate and Morningside's apparent violation of Section 367.031, F.S., are the central issues of this docket.

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**ISSUE 1:** Should Morningside Utility, Inc. be ordered to show cause, in writing within twenty days, why it should not be fined for violation of Section 367.031, Florida Statutes?

**RECOMMENDATION:** No. Show cause proceedings should not be initiated. (CROSBY)

**STAFF ANALYSIS:** As stated in the case background, Morningside Utility, Inc. is in apparent violation of Section 367.031, Florida Statutes, which states, in part, "Each utility subject to the jurisdiction of the commission must obtain . . . a certificate of authorization to provide water or wastewater service." The system was owned and operated by Schoolfield Properties until it was purchased by Mr. George Devillers, Morningside, in 1988. Morningside has been providing water service to its customers since that time without a certificate. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, 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. 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 "[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." Id. at 6.

Failure of Morningside to obtain a certificate prior to providing service appears to be due to lack of knowledge of the statutes and Commission rules. Mr. Devillers, the current owner, moved to Florida and bought the utility as an investment. Schoolfield Properties had been operating the system since 1983 without a certificate. At the time Mr. Devillers purchased the system from Schoolfield Properties, he had no knowledge of the Commission or its requirements. Morningside became aware of this Commission's regulation when DEP advised the utility that an additional well was needed to serve more customers. Upon being informed by the Commission staff of the requirements of Section 367.031, Florida Statutes, Morningside filed an application for a certificate.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, staff does not believe that the

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violation of Section 367.031, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Morningside filed the application soon after being informed that it was subject to Commission regulation because of the capacity of the system and number of customers served. Therefore, staff recommends that the Commission not order Morningside to show cause for failing to obtain a certificate prior to providing water service.

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**ISSUE 2:** Should the application of Morningside Utility, Inc. for Water Certificate No. 595-W be granted?

**RECOMMENDATION:** Yes, Morningside Utility, Inc. should be granted Water Certificate No. 595-W to serve the territory described in Attachment A. In addition Morningside Utility, Inc. should be required to record the 99-year lease in accordance with Section 695.01, F.S., and provide a recorded copy of the lease within 60 days of the date of the Order issued as a result of action taken at this agenda conference. (COKER, REDEMANN, CROSBY)

**STAFF ANALYSIS:** On May 28, 1997, Morningside Utility, Inc. (Morningside) filed its application for an original water certificate to provide service in Osceola County. 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 original certificate and initial rates and charges. The application contains a check in the amount of \$750, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence in the form of a 99-year lease that the utility has continued use of the land upon which it's facilities are located as required by Rule 25-30.033(1)(j), Florida Administrative Code. However, the lease is not recorded. Section 695.01, (1), F.S., states, in part, "no conveyance, transfer, or mortgage of real property, or any interest therein, nor any lease, for a term of one year or longer, shall be good and effectual in law. . . unless the same be recorded." Therefore, staff recommends that Morningside be required to provide a recorded copy of the lease within 60 days of the date of the Order issued as a result of action taken at this agenda conference.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.033(1)(l), (m) and (n), Florida Administrative Code. A description of the territory requested by the applicant is appended to this memorandum as Attachment A.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers in the proposed territory. No objections to the notice of application have been received and the time for filing such has expired.

Morningside has operated as a water utility service provider since 1983. The current owner, Mr. George Devillers has overseen the day to day operations of the utility system since 1988. Mr.

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Devillers has retained the services of a licensed operator. Staff has contacted DEP and learned that the utility is currently operating under a Consent Order. However, a DEP representative has assured staff Morningside is making the required additions in a satisfactory and timely manner. The customers should not experience any changes in the quality or costs of water service through this action.

The owner has submitted an affidavit within the application concerning financial ability. A bank statement for the utility was submitted with the application, which demonstrates a positive cash flow and adequate operating capital for this system. The affidavit states Mr. Devillers will meet any expenditures to maintain an adequate level of service currently provided to Morningside customers.

Based on the above information, staff believes it is in the public interest to grant the application for an original certificate. Accordingly, staff recommends that Morningside be granted Water Certificate No. 595-W to serve the territory described in Attachment A.

ATTACHMENT A

Morningside Utility, Inc.

TERRITORY DESCRIPTION

The following described lands located in portions of Section 3, Township 25 South, Range 30 East, Osceola County, Florida:

Beginning at the northeast corner of Section 3, Township 25 south, Range 30 east, Osceola County, Florida, also being the northeast corner of Lot 124, Morningside Village, Unit Four, as filed and recorded in Plat Book 5, Page 185 of the Public Records of Osceola County, Florida, run north  $88^{\circ} 57$  feet 45 inches west, along the north line of said Section 3, 1991.94 feet to the northwest corner of Lot 163, Morningside Village, Unit Five, as filed and recorded in Plat Book 6, Page 1 of the Public Records of Osceola County, Florida; run thence south  $00^{\circ} 58$  feet 04 inches west, along the west line of aforesaid Morningside Village, Unit Five, 655.51 feet to the southwest corner of Lot 159 of aforesaid Morningside Village, Unit Five; run thence south  $88^{\circ} 46$  feet 09 inches east, along the south line of said Morningside Village, Unit Five, 662.73 feet to the northwest corner of Lot 10, Morningside Village, Unit One, as filed and recorded in Plat Book 4, Page 84 of the Public Records of Osceola County, Florida; run thence south  $00^{\circ} 58$  feet 29 inches west, along the west line of aforesaid Morningside Village, Unit One, 1337.02 feet to the southwest corner of Lot 1 of aforesaid Morningside Village, Unit One; run thence along the south line of said Morningside Village, Unit One the following: south  $89^{\circ} 01$  feet 31 inches east, 175.00 feet; north  $25^{\circ} 05$  feet 45 inches east, 73.41 feet to a point on a 50.00 feet radius curve, concave northwesterly; run thence northeasterly along said 50.00 feet radius curve, through a central angle of  $98^{\circ} 02$  feet 52 inches, an arc distance of 85.56 feet (Chord bearing north  $41^{\circ} 57$  feet 03 inches east, Chord = 75.50 feet) to the southwest corner of Lot 19 of said Morningside Village, Unit One; run thence south  $89^{\circ} 01$  feet 31 inches east, along the south line of said Lot 19, 155.49 feet to the southeast corner of said Morningside Village, Unit One, said point being a point on the west line of Morningside Village, Unit Two, as filed and recorded in Plat Book 4, Page 85 of the Public Records of Osceola County, Florida; run thence south  $00^{\circ} 58$  feet 29 inches west, along said west line of Morningside Village, Unit Two, 37.00 feet to the southwest corner of said Morningside Village, Unit Two; run thence south  $89^{\circ} 01$  feet

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31 inches east, along the south line of said Morningside Village, Unit Two, 126.01 feet to a point on a 50.00 feet radius, concave northwesterly; run thence southeasterly along said 50.00 feet radius, through a central angle of  $101^{\circ} 32$  feet 13 inches, an arc distance of 88.61 feet (Chord bearing south  $38^{\circ} 15$  feet 24 inches east) to a point on the west line of Lot 44 of said Morningside Village, Unit Two; run thence south  $00^{\circ} 58$  feet 29 inches west, 35.00 feet; continue thence along aforesaid south line of Morningside Village, Unit Two, the following: south  $89^{\circ} 01$  feet 31 inches east, 145.00 feet; south  $00^{\circ} 58$  feet 29 inches west, 100.00 feet south  $89^{\circ} 01$  feet 13 inches east, 290.00 feet to the southwest corner of Lot 73, Morningside Village, Unit Three, as filed and recorded in Plat Book 5, Page 84 of the Public Records of Osceola County, Florida; run thence along the south line of said Morningside Village, Unit Three, the following: south  $89^{\circ} 01$  feet 31 inches west, 63.00 feet; south  $00^{\circ} 58$  feet 29 inches west, 133.00 feet; south  $89^{\circ} 01$  feet 31 inches east, 237.83 feet to the southeast corner of said Morningside Village, Unit Three, said corner being on the east line of aforesaid Section 3; run thence north  $01^{\circ} 11$  feet 59 inches east, along said east line, 2234.32 feet to the Point of Beginning.

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PAA ISSUE 3: What rates and charges should be approved for this utility?

RECOMMENDATION: The rates and charges as detailed in the staff analysis should be approved. The tariff should be effective for service rendered or connections made on or after the stamped approval date on the tariff. (COKER)

STAFF ANALYSIS: The utility's present rates and charges are as follows:

Monthly Service Rates

Residential and General Service - Water

<u>Meter Size</u>	<u>Base Facility Charge</u>
3/4"	\$ 12.00
Consumption Rate	\$ 2.20 per 1,000 gallons

Meter Test Charges

<u>Meter Size</u>	
5/8" x 3/4" meter	\$ 20.00
1.0" and 1.5" meter	\$ 25.00
2.0" and greater	Actual Cost

Miscellaneous Service Charges

Initial connection	\$ 15.00
Normal reconnection	\$ 15.00
Violation reconnection	\$ 15.00
Premises visit	\$ 10.00

Service Availability Charges

System Capacity Charge	\$600.00 per ERC
Meter Installation Charge (5/8" x 3/4")	\$ 65.00
Meter Installation Charge (over 5/8" x 3/4")	Actual Cost

Deposits

Morningside does not require deposits

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The current rates and charges became effective prior to the purchase of the system by the current owner in 1988, and the current owner has charged the same rate as the previous owner. As discussed in the Case Background, this system has never been issued an operating certificate. Therefore, rates have never been set by the Commission. However, staff believes the existing rates and charges to be reasonable and be approved. The utility's service availability policy states there is service available to the lots within the Morningside Village Mobile Home Park.

The utility has filed a tariff which reflects the above rates and charges. Staff recommends they be approved as submitted. Staff further recommends that Morningside be required to continue to charge these rates and charges until authorized to change by the Commission. The tariff should be effective for service rendered or connections made on after the stamped approval date on the tariff sheets.

**ISSUE 4:** Should the utility be required to pay regulatory assessment fees for 1996 and file a 1996 Annual Report with the Commission?

**RECOMMENDATION:** Yes, the utility should be required to remit regulatory assessment fees and file a 1996 Annual Report, within 45 days of the issue date of the Order issued as a result of action taken at this agenda conference. Morningside should also be put on notice that annual reports and regulatory assessment fees are due each year pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code. (COKER)

**STAFF ANALYSIS:** Pursuant to Rule 25-30.110(3), Florida Administrative Code, "[t]he obligation to file an annual report for any year shall apply to any utility which is subject to this Commission's jurisdiction as of December 31 of that year, whether or not the utility has actually applied for or has been issued a certificate." Additionally, Rule 25-30.120(2), Florida Administrative Code, states "any utility which is subject to this Commission's jurisdiction on or before December 31 of that year or for any part of that year, whether or not the utility has actually applied for or has been issued a certificate" is required to pay regulatory assessment fees. Therefore, staff recommends that Morningside be required to pay regulatory assessment fees and file an Annual Report for 1996, within 45 days of the date of the Order issued as a result of action taken at this agenda conference. Morningside should also be put on notice that annual reports and regulatory assessment fees are due each year pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed if no timely protests are filed to the proposed agency action issues. (CROSBY)

STAFF ANALYSIS: If there are no timely protests to the proposed agency action issues (Issue No. 3), no further action will be required and the docket should be closed.