

State of Florida

Public Service Commission

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RECORDS AND
REPORTING

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RECEIVED-FPSC

DATE: November 3, 1999

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

FROM: DIVISION OF WATER AND WASTEWATER (EDWARDS)
DIVISION OF LEGAL SERVICES (BRUBAKER) *JP MS RL JMD*

RE: DOCKET NO. 980543-WU - APPLICATION FOR AMENDMENT OF
CERTIFICATE NO. 363-W TO ADD TERRITORY IN MARION COUNTY BY
SUNSHINE UTILITIES OF CENTRAL FLORIDA, INC.

AGENDA: 11/16/99 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\980543.RCM

CASE BACKGROUND

Sunshine Utilities of Central Florida, Inc. (Sunshine Utilities or utility) is a Class B utility operating under the Commission's jurisdiction. The utility provides water service to approximately 1316 customers in Marion County. The wastewater service is provided by septic tanks. The utility's 1998 annual report shows an annual operating revenue of \$725,690 and a net operating income of \$55,704.

Pursuant to Section 367.045, Florida Statutes, on April 21, 1998, the utility applied for an amendment to Water Certificate No. 363-W in Marion County, Florida. This application traverses service territory of eighteen (18) non-centralized communities. The utility proposes to correct territory descriptions, add territory that it is currently serving outside its approved service area, and add new territory that is adjacent to several of its

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current water systems. On May 28, 1998, the utility filed a second application which was to expand the service area of the Oakhaven community. The two amendment applications were merged. On June 3, 1998, a letter objecting to Sunshine's request for extension of service was timely filed by Carol Masters, a resident of the service area which was the subject of the second amendment application. By Order No. PSC-98-1273-PCO-WU, issued August 30, 1998, the matter was scheduled for an administrative hearing. On November 20, 1998, Sunshine Utilities filed a letter requesting to withdraw its request to extend service to the area to the Oakhaven community, including a territory description and map of that area. In light of the withdrawal of the request to serve the Oakhaven community, Ms. Masters stated in conversations with legal staff that she therefore wished to withdraw her objection to Sunshine Utilities' application. By memo dated December 4, 1998, the Chairman's office canceled the administrative hearing which was scheduled in the matter.

Staff has authority to administratively approve applications for amendment pursuant to APM 2.07(c)(12), when no protests have been filed. This case is being brought to the attention of the Commission because an objection had been filed in the case, and because a show cause issue has been identified since the utility has been providing service to customers outside of its certificated service area.

DISCUSSION OF ISSUES

Issue 1: Should the Commission acknowledge Sunshine Utilities of Central Florida, Inc.'s notice of withdrawal of the portion of its application by which its sought to amend its certificate to include service to the Oakhaven community?

RECOMMENDATION: Yes. The Commission should acknowledge Sunshine Utilities of Central Florida, Inc.'s notice of withdrawal of the portion of its application by which its sought to amend its certificate to include service to the Oakhaven community. The Commission should also acknowledge the withdrawal of the objection to the utility's amendment application. (BRUBAKER)

STAFF ANALYSIS: As stated earlier, on November 20, 1998, Sunshine Utilities filed a notice withdrawing its request to extend service to the area known as "Oakhaven". In the past with cases such as this, the Commission has formally acknowledged such notices of withdrawal. In In Re: Application for amendment of Certificate No. 249-S In Volusia County by North Peninsula Utilities Corporation, Order No. PSC-94-1352-FOF-SU, issued November 7, 1994, in Docket No. 930851-SU, the Commission acknowledged the utility's notice to withdraw its application when the utility was not currently serving the additional territory, even though objections to the application were pending. Moreover, In In Re: Application for amendment of Certificate No. 427-W to add territory in Parcels A, B, C, D, and E in Marion County by Windstream Utilities Company, Order No. PSC-97-0095-FOF-WU, issued January 27, 1997, in Docket No. 930851-SU, the Commission acknowledged the utility's notice to withdraw its application, despite pending objections, when the Commission had not yet taken any action on the application. Furthermore, In In Re: Application by Rampart Utilities, Inc. for amendment of Certificate No. 497-S in Charlotte County to extend territory to service San Antonio Catholic Church, Order No. PSC-99-0025-FOF-SU, issued January 4, 1999, in Docket No. 980887-SU, the Commission acknowledged the withdrawal of the utility's application, despite a pending objection, when the Commission had not yet taken action on the utility's application and the utility was not currently serving the requested territory.

This Commission has not yet taken action on Sunshine Utilities' application for amendment. The utility is not currently serving the Oakhaven territory. Furthermore, Ms. Masters has stated to legal staff that the cause of her objection would be removed if the utility were to withdraw its request to serve this area.

Thus, staff recommends that the Commission acknowledge Sunshine Utilities' notice of withdrawal of the portion of its application by which sought to amend its certificate to include service to the Oakhaven territory. As a consequence of acknowledging the withdrawal of that portion of Sunshine Utilities' application, staff recommends that the Commission should also acknowledge the withdrawal of Ms. Masters' objection to the utility's amendment application.

ISSUE 2: Should Sunshine Utilities of Central Florida, Inc., be ordered 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. (BRUBAKER)

STAFF ANALYSIS: As stated in the case background, Sunshine Utilities is serving customers outside of its certificated territory. Section 367.045(2), Florida Statutes, states that:

A utility may not...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.

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. In serving outside of its certificated territory without obtaining an amended certificate of authorization, the utility's act was "willful" in the sense intended by Section 367.161, 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, 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 the utility's 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), Florida Statutes, according to its application, the utility erroneously believed that the territory in question was included in its service area. When the error was discovered, the utility filed the instant application to correct the mistake and include the territory to its service area.

Staff does not believe that the apparent violation of Section 367.045, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Sunshine

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Utilities to show cause for failure to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

ISSUE 3: Should Sunshine Utilities of Central Florida, Inc.'s application for amendment of Water Certificate No. 363-W be granted?

RECOMMENDATION: Yes, Sunshine Utilities of Central Florida, Inc.'s application to expand its territory, as described in Attachment A, should be granted. (EDWARDS)

STAFF ANALYSIS: On April 21, 1998, the utility applied for an amendment to Water Certificate No. 363-W in Marion County, Florida. This application traverses service territory of approximately eighteen (18) non-centralized communities. The purpose of this amendment application is to correct territory descriptions that were written incorrectly and territory descriptions that did not include areas that are presently being serviced by the utility, which the utility never added to their existing service area (see Issue 2 of this recommendation). In addition, Sunshine Utilities visualized the potential for growth in areas adjacent to its service area borders and the utility believed that it would be advantageous to extend its service boundaries to meet the potential growth.

On May 28, 1998, the utility filed a second application and a filing fee of \$100 to amend Water Certificate No. 363-W in Marion County. This application (to extend the service area of Oakhaven) was merged with the previous filing. The second application (the Oakhaven application) was formally protested by a customer. As discussed in Issue 1, the utility later withdrew the second application.

This 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 \$1,750 which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.036(1)(d), Florida Administrative Code.

Adequate service territory and system maps and territory descriptions have been provided as prescribed by Rule 25-30.036(1)(e), (f) and (i), Florida Administrative Code. A description of the territory requested by the utility is appended to this recommendation as Attachment A. The utility has filed 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. The local planning agency was provided notice of the application and did not file a protest to the amendment. With the exception of the protest filed by Ms. Masters, no objections to the application were received. As discussed in Issue 1, Ms. Masters has withdrawn her objection with respect to Sunshine Utilities' amendment application. The utility states that its water service requirements, in all of its current and proposed service territories, is or will be consistent with the local comprehensive plan as approved by the Department of Community Affairs. The utility states that it is presently providing and can continually provide service to the proposed service area. Therefore, staff believes that the public interest is best served by granting this application.

The utility has been in existence since 1974, and now provides water service to approximately eighteen (18) communities. The utility appears to have sufficient plant capacity to support this expansion, and the addition of these customers will only add to the stability of the company by increasing its customer base. In addition, the construction of additional water plant is not necessary to provide adequate water service to the purposed new customers.

The utility's operator, Mr. Kelvin Edun, holds a Class C drinking water permit, and his license number is C-7459. The Department of Environmental Protection has no outstanding notices of violation issued for this system. The new customers will demand approximately .461 million gallons per day (gpd) of potable water. The utility currently has eighteen (18) water treatment plants which are authorized to withdraw 1.56 million gallons of water per day, and a maximum daily design withdrawal capacity of 3.72 million gallons per day (mgd). Therefore, it is apparent that the utility has the water treatment capacity to serve these customers. Consequently, staff believes the utility has demonstrated the financial and technical expertise to provide quality service to these customers. The utility has filed revised tariff sheets incorporating the additional territory into its tariff and returned its certificate for entry reflecting the additional territory.

Based on the above information, staff recommends that it is in the public interest to grant the application for an amendment to Water Certificate No. 363-W to Sunshine Utilities of Central Florida, Inc. for the territory described in Attachment A, and that the application should be granted.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes, if staff's recommendations in Issues 1, 2 and 3 are approved, no further action is required and the docket should be closed. (BRUBAKER)

STAFF ANALYSIS: If staff's recommendations in Issues 1, 2 and 3 are approved, no further action is required and the docket should be closed.

ATTACHMENT A

SUNSHINE UTILITIES OF CENTRAL FLORIDA, INC.

TERRITORY DESCRIPTION - MARION COUNTY

Township 14 South, Range 22 East

Section 34

PEARL BRITTAIN:

The North 1/2 of the Southeast 1/4 of the Southwest 1/4 of said section 34.

SUNLIGHT ACRES

The West 1/2 of the Northeast 1/4 of said section 10.

SECTION 14 & 16 TOWNSHIP 14 South Range 22 East

LITTLE LAKE WIER:

The South 1/2 of the Northwest 1/4 of said Section 15 and the Northeast 1/4 of the Northwest 1/54 of the Southwest 1/4 of said Section 15 and the West 1/2 of the Northwest 1/4 of the Southwest 1/4 of said Section 15 and the Northeast 1/4 of the Southwest 1/4 of said Section 16 and the Southeast 1/4 of the Northeast 1/4 of Section 16 and the East 1/2 of the Southwest 1/4 of the Northwest 1/4 of said Section 16.

Section 34 Township 14 South, Range 22 East

BOULDER HILL :

The Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of the South 1/2 of the Southeast 1/4 of the Northeast 1/4 and the Southwest 1/4 of said Section 34.

Section 21 Township 14 South, Range 22

FOX MOUNTAIN (Now know as Sun Resorts)

The West 1/2 of the Southeast 1/4 of the Northwest 1/4 and the Southwest 1/4 of the Southeast 1/4 of the Northwest 1/4 of said Section 21.

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Sections 4,5,6,9,and 16
OCKLAWAHA

The North 1/2 of Section 9

AND

The South 1/2 and the Northwest 1/4 of said Section 4

AND

All of Section 5 North of Lake Weir

AND

The East 1/2 the Northeast 1/4 of said Section 6 North of Lake Weir

AND

The East 1/4 of the West 1/2 of the Northeast 1/4 of said Section
6

AND

The Southwest 1/4 of the Southeast 1/4 of said Section 32 and the
Southeast 1/4 of the Southwest 1/4 of said Section 32.

Section 32 Township 16 S Range 23 E
BELLEVIEW OAKS I & II

The East 1/2 the Southeast 1/4 of the Northwest 1/4 and the West
1/2 the Southwest 1/4 of the Northeast 1/4 and the South 1/2 the
Northwest 1/4 of the Northwest 1/4 of said Section 32.

Section 29 Township 14 S Range 22 E
ASHLEY HEIGHTS

The West 1/2 the Northeast 1/4 of the Southeast 1/4 of said Section
29.

Section 29 Township 14 S Range 22 E
COVENTRY

The South 1/2 the Northwest 1/4 of the North 1/2 the Southwest 1/4
of said Section 29

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Section 6 and 31 Township 15 S Range 25 E
WINDING WATERS

The Southeast 1/4 of the Southeast 1/4 of Section 31

AND

All of said Section 6.

Section 32 Township 14 S Range 22 E
NORTHWOODS

The Southeast 1/4 of the Southeast 1/4 of said Section 32