

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: October 10, 2014

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Lee, Lewis) *OK*
Division of Economics (Bruce, Hudson) *CKU PL*
Office of the General Counsel (Brownless) *DB SH PA MM JC*

RE: Docket No. 130230-SU – Application for amendment of territory for Certificate No. 300-S in Lee County by Forest Utilities, Inc. *TB*

AGENDA: 10/22/14 – Special Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Forest Utilities, Inc. (Forest or Utility) is a Class B utility providing wastewater service only in Lee County. On August 27, 2013, Forest filed an application with this Commission to amend Certificate No. 300-S to include additional territory in Lee County, Florida.

According to the application, the sole customer in the area proposed by this application to be added to Forest's certificated territory is the Jamaica Bay Manufactured Home Community consisting of 1,417 units. The developer of the community is Jamaica Bay West Associates, LP (Jamaica Bay). In September 2005, Forest executed a Bulk Service Agreement with the Jamaica Bay developer to provide service to the development at a point of connection within Forest's certificated territory. By Order No. PSC-05-1262-TRF-SU, issued December 27, 2005, in Docket No. 050803-SU, the Commission approved the rate in the Bulk Service Agreement contained in Tariff Sheet No. 17.1.

In November of 2009, Jamaica Bay filed a breach of contract suit against Source, Inc., the engineering firm that designed improvements to its wastewater collection system to enable Jamaica Bay to receive wastewater treatment from Forest. Forest was added as a defendant to the suit in July 2010 and countersued for breach of the Bulk Service Agreement since Jamaica Bay had stopped sending its wastewater to Forest for treatment. Both parties alleged that damages in excess of \$15,000 were incurred as a result of the respective contract breaches. On July 9, 2013, the parties entered an oral settlement agreement at the final hearing to resolve both breach of contract suits. The oral settlement agreement was formalized in a written Supplement to Settlement Agreement (Settlement), dated July 11, 2013. (Document No. 05695-13)

The Settlement: (1) transfers the Jamaica Bay Manufactured Home Community's on-site wastewater collection system to Forest upon the completion of specific engineering studies and improvements within a specified time frame; (2) grants Forest the right to provide retail wastewater services to Jamaica Bay upon the extension of Forest's certificated territory to include Jamaica Bay; and (3) provides for retail service by Forest to Jamaica Bay under Forest's General and Multi-Family Service (Master Metered) GS Rate Schedule. Consistent with the Settlement, Forest filed a request for withdrawal of Tariff Sheet No. 17.1, Jamaica Bay's special bulk service rate, on August 27, 2013.

Forest has been in operation under the Commission's jurisdiction since its original certificate was approved in 1981. The original certificate was subsequently amended in 1985, 1996, and 2006. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve Forest's application to amend Certificate No. 300-S to include additional territory in Lee County?

Recommendation: Yes. It is in the public interest to amend Certificate No. 300-S to include the additional territory which Forest is requesting to serve, effective the date of the Commission's vote. The resultant order should serve as Forest's amended certificate and should be retained by the Utility. (Lee)

Staff Analysis: The Utility's application to amend its authorized service territory was submitted in accordance to Rule 25-30.036, Florida Administrative Code (F.A.C.). Forest has provided proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C. No objections to the application have been received and the time for filing such has expired.

Forest has been in operation under Commission jurisdiction since 1981, and has demonstrated its ability to finance and operate its wastewater collection and treatment facilities in order to provide satisfactory service to its customers. The operation of the Utility's system is under the jurisdiction of Florida Department of Environmental Protection (DEP). There are no outstanding enforcement issues and Forest is in compliance with respect to DEP standards. Adequate service territory and system maps and a territory description have been provided, as prescribed by Rule 25-30.036, F.A.C. Attachment A describes the existing authorization and the additional territory which Forest is requesting to serve.

Forest's wastewater treatment plant has a permitted capacity of 800,000 gallons per day and is currently processing an average of 225,000 gallons per day. Jamaica Bay is projected to add an average flow of 269,000 gallons per day to this amount for a total of 491,000 gallons per day. That being the case, Forest has sufficient wastewater treatment capacity to add Jamaica Bay to its service territory.

The basis of the circuit court dispute was the performance of the collection and transmission system for the handling of wastewater flows to the treatment plant. The wastewater flow rate varies due to normal operating conditions and weather events that may increase the contribution of the inflow and infiltration into Jamaica Bay's system. The Settlement negotiated between the parties contains detailed provisions regarding the obligations of Forest to perform engineering studies to demonstrate that its system can, in fact, handle "100% of the wastewater flows from Jamaica Bay, including any inflow and infiltration occurring in Jamaica Bay's System and the customer service lines . . ." [Settlement at ¶ 2.1] Further, Forest is required to construct "all of the necessary improvements, whether they be on the Forest or Jamaica Bay side of the Point of Connection." [Id.] The "flow requirements work" must be completed and be approved by Pigeon-Roberts, Jamaica Bay's engineer, no later than 18 months from the date of the Settlement or by January 10, 2015. [Settlement, ¶ 2.2] Upon verification by Pigeon-Roberts that the flow requirement of 650 gallons per minute has been met and DEP approval for operation of the wastewater/collection system, Jamaica Bay is required to convey its system to Forest and send its wastewater to Forest for treatment. Should Forest fail to meet the flow requirements by January 10, 2015, Jamaica Bay will have the right, at its sole discretion, to convey its system to Forest and to commence sending its wastewater to Forest or to rescind the

current Bulk Service Agreement with Forest, retain its system and continue to receive bulk wastewater treatment from Lee County. [Settlement at ¶¶ 5.1, 6.2]

On September 3, 2014, the Utility provided certification by its engineer that the flow requirement of 650 gallons per minute had been met and documented DEP's approval of the system's operation contingent upon the replacement of a manual valve with an automated valve upon project completion. Pigeon-Roberts issued a report on September 30, 2014, confirming that the automated valve had been installed and was operating as designed and intended. Pigeon-Roberts reviewed all DEP and Lee County permits, as well as all engineering plans, and conducted a final field verification which demonstrated that the flow requirements had been met. Based on its review, Pigeon-Roberts' report concluded that the system's construction and performance met the flow requirements and operational verification as contemplated by the Settlement. All terms of the Settlement having been timely met, Jamaica Bay is now required to convey its wastewater collection system and send its wastewater to Forest for treatment on or before October 30, 2014.

Based on the foregoing, staff believes Forest has demonstrated the need and the Utility's ability to extend its territory to Jamaica Bay. Therefore, staff recommends that it is in the public interest to amend Certificate No. 300-S (Attachment A) to include the additional territory which Forest is requesting to serve, effective the date of the Commission's vote. The resultant order should serve as Forest's amended certificate and should be retained by the Utility.

Issue 2: Does the Commission's approval of Forest's application to amend Certificate No. 300-S to include Jamaica Bay constitute a *de facto* approval of the terms of the Settlement by the Commission?

Recommendation: No. The Settlement was negotiated between Jamaica Bay and Forest as a resolution of all of the issues raised in the circuit court breach of contract case between these parties. The Settlement is not binding on the Commission and the Commission's approval of the request for amendment of its certificated service territory to add Jamaica Bay does not constitute the Commission's approval of any of the terms of the Settlement. (Brownless)

Staff Analysis: The Settlement states that wastewater service shall be taken by Jamaica Bay under Forest's General and Multi-Family Service (Master Metered) Rate Schedule GS, tariff sheet 16.0. Forest has indicated that service will be provided to Jamaica Bay by two 10" turbine meters. Paragraph 8 of the Settlement states that: "In no event shall the rate Forest charges JBW exceed the rate charged by Lee County Utilities at its prevailing multi-family metered rate." Currently Lee County's multi-family rate is \$13.01 base charge per unit plus an administrative charge of \$3.28 per unit plus \$5.59 per 1,000 gallons of water usage. Forest's General and Multi-Family Service (Master Metered) Rate Schedule GS, the tariff rate that would apply to Jamaica Bay, charges \$2,281.41 for a 10" turbine per month base facility charge plus \$4.33 per 1,000 gallons. Lee County Utilities current charges are \$13.01 base charge per unit plus administrative charge of \$3.28 per unit plus \$5.59 per 1,000 gallons of water usage. In response to staff's inquiries, Forest has stated that its rates have never exceeded those of Lee County Utilities and it does not anticipate that they will ever do so.

Forest is required by Section 367.091(4), F.S., to charge all customers in its service territory, whose service characteristics are identical, the same Commission-approved tariffed rate. Therefore, it is troubling that the Settlement caps the amount that can be charged Jamaica Bay at the amount that would be generated by using Lee County Utilities' prevailing multi-family metered rate. However, the terms of the Settlement Agreement are not binding on the Commission. In the future, should the charges generated by Forest's master metered multi-family GS rate exceed those of Lee County Utilities' prevailing multi-family metered rate, whatever shortfall is created by capping the amount charged will be the responsibility of Forest's owners, not its ratepayers.

The Settlement was negotiated between Jamaica Bay and Forest as a resolution of all of the issues raised in the circuit court breach of contract case between these parties. The Settlement is not binding on the Commission and the Commission's approval of the request for amendment of its certificated service territory to add Jamaica Bay does not constitute the Commission's approval of any of the terms of the Settlement.

Issue 3: Should Forest's request to cancel Seventh Revised Tariff Sheet No. 17.1 be approved?

Recommendation: Yes. Staff recommends that Forest's request to cancel Seventh Revised Tariff Sheet No. 17.1 be approved. (Bruce)

Staff Analysis: Currently, Forest has a bulk service agreement with Jamaica Bay to provide bulk wastewater service. Seventh Revised Sheet No. 17.1 is Forest's approved tariff for bulk wastewater service to Jamaica Bay. Forest requested to cancel this tariff from the Utility's existing wastewater tariff effective upon Jamaica Bay's conveyance of its internal wastewater collection system to Forest. The Settlement Agreement indicates that, upon approval of the flow requirements and DEP's approval to place the wastewater collection/transmission system into service, Jamaica Bay shall convey its system to Forest and the Bulk Service Agreement shall be terminated. The Settlement Agreement states Jamaica Bay will be billed pursuant to Tariff Sheet No. 16.1, General and Multi-Family Service (Master-Metered) Rate Schedule.

At this time Forest has complied with all of the requirements of the Settlement. As a result, Seventh Revised Tariff Sheet No. 17.1 will no longer be applicable to Jamaica Bay and the bulk service agreement is not applicable to any other customer of the Utility. Based on estimated wastewater flows of 84,304 gallons, the Forest Master Metered rate will result in annual revenues of approximately \$420,000. The Utility's estimated additional operating expenses are \$100,000. Based on the above, staff recommends that Forest's request to cancel Seventh Revised Tariff Sheet No. 17.1 be approved.

Issue 4: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendations, the docket should be closed. (Brownless)

Staff Analysis: If the Commission approves staff's recommendations, the docket should be closed.

FLORIDA PUBLIC SERVICE COMMISSION
Authorizes
Forest Utilities, Inc.
Pursuant to
Certificate Number 300-S

to provide wastewater service in Lee County accordance with the provision of Chapter 367, Florida Statutes, 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, cancelled or revoked by Orders of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
10430	12/02/1981	810006-S	Grandfather Certificate
15382	11/21/1985	850789-SU	Amendment
PSC-96-0930-FOF-SU	07/17/1996	960229-SU	Amendment
PSC-06-0538-FOF-SU	06/26/2006	060169-SU	Amendment
*	*	130230-SU	Amendment

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

Territory To Be Added

PARCEL I:

The South 222 feet of the Southeast quarter (SE ¼) of the Southeast quarter (SE ¼) of Section 25, Township 45 South, Range 24 East, excepting the former Iona Drainage District right of way, Public Records of Lee County, Florida.

PARCEL II:

The Northeast quarter (NE 1/4) LESS right of way for railroad, of Section 36, Township 45 South, Range 24 East.

PARCEL III:

The North half (N 1/2) of the Northwest quarter (NW 1/4) of Section 36, Township 45 South, Range 24 East, lying East of State Road No. 45.

Excepting therefrom a commercial strip of land 300 feet wide described as follows:

PARCEL A:

Beginning at the Northwest corner of Jamaica Bay West, said point being on the Northeasterly right of way of U.S. No. 41, thence 764.70 feet along the arc of a curve concave to the Northeast having a radius of 2732.79 feet and subtended by a chord having a length of 762.21 feet and bearing South 23°33'00" East to a point of tangency; thence South 31°34'00" East along said right of way for 52.37 feet to a point of curvature; thence 39.27 feet along the arc of a curve concave to the Northeast having a radius of 25.00 feet and subtended by a chord having a length of 35.36 feet and bearing south 76°34'00" East to a point of reverse curvature on the Northerly right of way of Jamaica Bay Drive; thence 169.85 feet along said right of way along the arc of a curve concave to the Southwest having a radius of 144.83 feet and subtended by a chord having a length of 160.28 feet and bearing South 87°58'11" East to a point of reverse curvature on said Northerly right of way; thence 239.88 feet along said Northerly right of way along the arc of a curve concave to the Northeast having a radius of 500 feet and subtended by a chord having a length of 237.59 feet and bearing South 68°07'01" East to a point on a line 300 feet, as measured perpendicular, from the Northeasterly right of way of U.S. No. 41; thence North 31°34'00" West parallel with and 300 feet from said Northeasterly right of way for 356.92 feet to a point of curvature; thence 600.64 feet along said 300 foot line along the arc of a curve concave to the Northeast having a radius 2432.79 feet and subtended by a chord having a length of 599.11 feet and bearing North 24°29'38" West to the North line of Jamaica Bay West; thence South 89°21'17" West along the North line of Jamaica West for 311.79 feet to the Point of Beginning.

Also excepting therefrom:

PARCEL B:

Beginning at the Southwest corner of Jamaica Bay West, said point being on the Northeasterly right of way of U.S. No.41 and the South line of the North half (N ½) of the Northwest quarter (NW ¼) of Section 36, Township 45 South, Range 24 East; thence North 31°34'00" West along said right of way 526.87 feet to a point of curvature; thence 39.27 feet along the arc of a curve concave to the Southeast having a radius of 25.00 feet and subtended by a chord having a length of 35.36 feet and bearing North 13°26'00" East to a point of compound curvature on the Southerly right of way of Jamaica Bay Drive; thence 106.39 feet along said Southerly right of way along the arc of a curve concave to the South having a radius of 96.62 feet and subtended by a chord having a length of 101.09 feet and bearing North 89°58'36" East to a point of reverse curvature on said Southerly right of way; thence 288.54 feet along said Southerly right of way along the arc of a curve concave to the Northeast having a radius of 570.

feet and subtended by a chord having a length of 285.47 feet and bearing South 72°58'54" East to a point on a line 300 feet; as measured perpendicular, from the Northeast right of way of U.S. No. 41; thence South 31°34'00" East along said 300 foot line 463.50 feet to the South line of the North half (N 1/2) of the Northwest quarter (NW ¼) of Section 36, Township 45 South, Range 24 East, thence South 89°12'02" West along said South line for 349.14 feet to the Point of Beginning.

PARCEL IV:

The Northeast quarter (NE 1/4) of the Southeast quarter (SE 1/4) of the Northwest quarter (NW ¼) of Section 36, Township 45 South, Range 24 East.

PARCEL V:

Beginning at a point in the North line of the Southeast quarter (SE ¼) of the Northeast quarter (NE ¼) of Section 36, Township 45 South, Range 24 East, distance 116 feet Westerly from the Northeast corner thereof, and in the Westerly right of way line of Iona Drainage District, running thence Southerly on said Westerly right of way line of Iona Drainage District 2641.33 feet to its intersection with the South line of the Northeast quarter (NE ¼) of the Southeast quarter (SE ¼) of said Section 36 at a point therein distant 117 feet Westerly from the Southeast corner thereof; thence Westerly on said South line of the Northeast quarter (NE ¼) of the Southeast quarter (SE ¼) a distance of 138.6 feet; thence Northerly on a straight line parallel with and 50 feet Westerly from center line of main trac of Seaboard All Florida Railway as surveyed and staked across lands of grantor, 2641.56 feet to North line of said Southeast quarter (SE ¼) of the Northeast quarter (NE ¼) of Section 36; thence Easterly on said North line, 120.3 feet to the Point of Beginning.

PARCEL C:

Commencing at Northeast corner of Section 36, Township 45 South, Range 24 East, then South 89°10'56" West along the North line of said Section 36 for 183.30 feet to the Point of Beginning; thence continue South 89°10'56" West along said North line for 37.30 feet to the Westerly former right-of-way of the Seaboard All Florida Railroad; thence South 0°15'01" West along said Westerly right-of-way line for 1320.51 feet to the South line of the Northeast quarter (NE ¼) of the Northeast quarter (NE ¼) of said Section 36; thence North 89°07'32" East along said South line for 37.30 feet; thence North 0°15'01" East parallel with and 37.30 feet as measured at right angle from said Westerly right of way for 1320.48 feet to the Point of Beginning.