

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of Certificate No. 390-W to extend service territory to include unit numbers 3, 4, and 5 of Bahia Oaks Subdivision in Marion County by Countywide Utility Company.

DOCKET NO. 970085-WU
ORDER NO. PSC-97-0578-FOF-WU
ISSUED: May 20, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER AMENDING CERTIFICATE AND CLOSING DOCKET

BY THE COMMISSION:

On January 17, 1997, CountyWide Utility Company, (CWU or utility) filed an application for amendment of Certificate No. 390-W to include additional territory in Marion County, Florida. The territory requested by CWU includes Units Three, Four and Five of the Bahia Oaks Subdivision. Currently, the utility has authorization to serve Units One and Two of the Subdivision and some adjacent territory. CWU's water treatment plant, which serves the Subdivision, consists of two six inch wells that can produce .57 million gallons per day (mgd). At build out, the demand from the development is expected to be .435 mgd.

CWU's service area was granted by Order No. 11868, issued on April 21, 1983, in Docket No. 810369-WU. However, the territory granted by that order, overlaps another utility's service area. In addition, at the time of CWU's application for amendment, CWU was serving 110 residential water customers in Unit Three outside of its certificated area, which is an apparent violation of Section 367.045, Florida Statutes. The discrepancy in the service area and the utility's apparent violation will be discussed later in this Order.

DOCUMENT NUMBER-DATE

05053 MAY 20 97

FPSC-RECORDS/REPORTING

Show Cause

As stated previously, CountyWide Utility Company is in apparent violation of Section 367.045, Florida Statutes, which states, in 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 Commission. . . ." CWU has been providing water service to 110 customers outside of its certificated area for some time without obtaining an amended certificate of authorization. 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.

CWU's failure to obtain the approval of the Commission prior to extending its service area appears to be due to the confusion in the original filing and CWU's belief that the territory being served was within its certificated area. The original application filed in Docket No. 810369-WU included incorrect territory descriptions for the Bahia Oaks area, which appear to have been rewritten several times. The Bahia Oaks area is made up of Units One, Two, Three, Four and Five. In its original application, it appears that CWU only requested to serve Bahia Oaks Units One and Two, and indicated that Units Three, Four and Five would be served at a later date. Order No. 11868, issued on April 21, 1983, in Docket No. 810369-WU, granted CWU the authority to serve Bahia Oaks Units One and Two and some adjacent vacant territory. Subsequent to the issuance of Order No. 11868, CWU began serving customers in the Unit Three in 1990 without obtaining Commission approval because of its mistaken belief that all of the Units were in its service area.

Although CWU failed to obtain an amended certificate prior to providing service outside of its service area, we do not find that the violation of Section 367.045, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. CWU filed the application for amendment of its service area as soon as it became aware that it was serving outside of its certificated area. Therefore, a show cause proceeding will not be initiated against CWU for failure to obtain an amended certificate prior to providing service outside of its certificated territory.

Application

Except as discussed previously, the application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$500, pursuant to Rule 25-30.020, Florida Administrative Code. CWU provided a copy of a 99 year lease as proof that it has continuous use of the land upon which its facilities are located as required by Rule 25-30.036(3) (d), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(3) (e), (f) and (I), Florida Administrative Code. The additional territory which CWU has requested to serve is shown on Attachment A of this Order, which by reference is incorporated herein.

CWU provided proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application have been received and the time for filing such has expired.

CWU has been in existence providing satisfactory water service subject to Commission regulation since 1981. Environmasters Water and Wastewater Services, Inc. has been operating and maintaining CWU's water system since 1992. From an audit conducted by the Public Service Commission in 1993 and information provided with the application, the utility appears to have the financial and

technical ability to provide service to the customers in the additional area. In addition, according to the Department of Environmental Protection, there are no outstanding notices of violation against the utility.

Based on the foregoing, we find that it is in the public interest to amend Certificate No. 390-W, held by CWU, to include the territory described in Attachment A. CWU shall charge the customers in the additional territory the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. CWU has returned Certificate No. 390-W for entry reflecting the additional territory. CWU has also filed revised tariff sheets which reflect the amendment.

Correction of Territory

In the fall of 1996, CWU became aware that there were discrepancies between the description of the territory granted by Order No. 11868 and the area it was actually serving. CWU's original application, filed in Docket No. 810369-W, requested territory that included Units One and Two of the Bahia Oaks Subdivision. The application also stated that Units Three, Four and Five would be served at a later date. The territory descriptions were written incorrectly, and several attempts were made by both staff and the utility to rectify the problems. The final product included territory in Units One, Two and some adjacent territory. A small portion of the original territory granted to County-Wide is now being served by another regulated utility, and is included in that utility's service area.

Therefore, we find it is in the public interest to correct the description of the territory CWU is authorized to serve by deleting the territory served by another utility. The territory granted by Order No. 11868 and authorized by Certificate No. 390-W is hereby amended to reflect the territory shown on Attachment B of this Order, which by reference is incorporated herein. CWU has returned Certificate No. 390-W to the Commission for correction of the territory as shown on Attachment B of this Order. The utility has also filed revised tariff sheets that reflect the corrected territory description.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Certificate No. 390-W, held by County Wide Utility Company, Inc., 7801 Southeast 58th Avenue, Ocala, Florida 34480, is hereby amended to reflect the additional territory shown on Attachment A of this Order. It is further

ORDERED that the territory granted CountyWide Utility Company by Order No. 11868, and authorized by Certificate No. 390-W, is hereby corrected to reflect the territory shown on Attachment B of this Order. It is further

ORDERED that CountyWide Utility Company shall charge the customers in the additional territory the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that Docket No. 970085-WU is hereby closed.

By ORDER of the Florida Public Service Commission, this 20th day of May, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

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ATTACHMENT A

COUNTY-WIDE UTILITY COMPANY, INC.

MARION COUNTY

ADDITIONAL WATER AREA

Township 16 South, Range 21 East, Marion County, Florida

Section 5

The East 3/4 of the South 1/2 of the Southeast 1/4

Section 8

That portion of the Northeast 1/4 lying North and West of State Road 200. Except: Beginning at the intersection of the South boundary of the Northeast 1/4 and the Northerly right-of-way of State Road 200; thence North 89° 53' 23" West a distance of 1,458.52 feet; thence North 00° 00' 34" East a distance of 665.08 feet; thence North 89° 53' 23" East a distance of 1,326.73 feet; thence South 69° 21' 33" East a distance of 557.40 feet; thence Southwesterly along the Northwestern right-of-way line of State Road 200 to the POINT OF BEGINNING.

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ATTACHMENT B

COUNTY-WIDE UTILITY COMPANY, INC.
MARION COUNTY - WATER SERVICE AREA
ORDER NO. 11868 (CORRECTED)

Township 16 South, Range 21 East, Marion County, Florida

Section 4

The Southwest 1/4

Less and except that portion of the Northeast 1/4 of said Southwest 1/4 of said Section 4 lying North and West of State Road 200

and

Less and except that portion of the Northeast 1/4 of said Southeast 1/4 of the Southwest 1/4 of said Section 4 lying North and West of State Road 200.

Section 9

That portion of the Northwest 1/4, lying North and West of State Road 200.