

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: July 17, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Redemann) *RRR f R ED*
Office of the General Counsel (Fleming) *WASB* *W* *W*

RE: Docket No. 080213-WU – Application for amendment of Certificate 636-W to extend water service area in Highlands County by Silver Lake Utilities, Inc.

AGENDA: 07/29/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080213.RCM.DOC

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COMMISSION
CLERK

Case Background

Silver Lake Utilities, Inc. (Silver Lake or utility) is a Class C utility. By Order No. PSC-07-0717-FOF-WS, issued September 4, 2007, the Commission granted Silver Lake Certificate Nos. 636-W and 546-S to serve territory in Highlands and Glades Counties; original water and wastewater rates were also established in that docket by Order No. PSC-07-0983-PAA-WS¹, issued December 10, 2007. Currently, the utility provides service to the 50 connections that maintain the ranch, farm, and nursery operations on the property.

On April 11, 2008, Silver Lake filed an amendment application to include approximately 2,072 additional acres in Highlands County. The proposed area is located in the Southwest

¹ In Docket No. 060726-WS, In re: Application for certificates to provide water and wastewater service in Glades County and water service in Highlands County by Silver Lake Utilities, Inc.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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Florida Water Management District (SWFWMD). The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve the application to amend Certificate No. 636-W in Highlands County by Silver Lake Utilities, Inc.?

Recommendation: Yes, the Commission should approve Silver Lake Utilities, Inc.'s amendment application to expand its territory. The proposed territory amendment is described in Attachment A to this recommendation. The resultant order should serve as Silver Lake Utilities, Inc.'s amended certificate and it should be retained by the utility. Silver Lake Utilities, Inc. should charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. Within 90 days from the date of the order approving certificate, the applicant should submit an executed and recorded lease agreement for the land for the existing wells. (Redemann)

Staff Analysis: On April 11, 2008, Silver Lake filed an amendment application to include approximately 2,072 additional acres in Highlands County, pursuant to Rule 25-30.036(3), Florida Administrative Code (F.A.C.). This amendment is to extend service to the Lake Placid Grove farm. Wastewater service is provided by septic tanks. The requested territory is contiguous to the utility's existing service territory. The land owner, a related party, will turn over the existing water facilities to the utility, and the utility will continue to employ the operations and maintenance personnel who have been operating the system since 1992.

The application complies with the governing statute, Section 367.045, F.S., and other pertinent statutes and administrative rules concerning an application for amendment of certificate. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C. No objections to the notice were received and the time for filing such has expired. Adequate service territory and system maps and a territory description have been provided. A description of the territory requested to be added by the utility is appended to this recommendation as Attachment A. The utility is funded through its sole shareholder, Lykes Bros., Inc. The utility is in compliance with the Florida Department of Environmental Protection and the SWFWMD.

Rule 25-30.036(3)(d), F.A.C., requires evidence in the form of a warranty deed that the utility owns the land upon which the utility treatment facilities are or will be located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. The application states the utility intends to enter into a long-term lease for the land for the existing wells. Staff recommends that, within 90 days from the date of the order approving the certificate, the applicant should be required to submit an executed and recorded lease agreement for the land for the existing wells.

According to the Department of Community Affairs (DCA), the area is zoned for agriculture use on the County's Future Land Use Map; residential development is allowed at a density of one dwelling unit per five acres. The County commented that it was not aware of this utility providing water service within the County. The County's position is that new central water and wastewater services should be provided by a public entity. In addition, the SWFWMD indicated that the utility is currently permitted for citrus processing and not for residential

development and that the utility needs to modify its consumptive use permit to indicate it intends to be a public supplier.

The utility responded to the DCA, Highlands County, and SWFWMD comments by indicating that water service is provided without compensation to the existing related party facilities on the property, which consist of houses, offices, barns, and shops interspersed throughout the proposed area. Those facilities will be transferred to the utility upon Commission approval of this application. The utility further identified meetings in 2006 and 2008 with Highlands County officials to discuss the original certificate and the amendment applications. The meetings were held at the request of the utility in an effort to obtain input from and coordinate with the senior representatives of Highlands County prior to any action or activity by the utility.

The utility staff has also been in contact with representatives of the SWFWMD in an effort to coordinate with the SWFWMD to modify the current consumptive use permits from agriculture to public supply. One of the utility wells is already permitted for public supply use. The utility also acknowledged the need to continue to coordinate any future initiatives with the staff of Highlands County and the SWFWMD.

Based on the above information, staff recommends that the utility has the financial and technical ability to serve the existing facilities in the proposed additional territory. The utility appears to be working with the Highland County and SWFWMD staff to address their concerns regarding the existing and planned water uses. Therefore, staff recommends that the Commission approve Silver Lake Utilities, Inc.'s amendment application to expand its territory. The proposed territory amendment is described in Attachment A to this recommendation. The resultant order should serve as Silver Lake's amended certificate and it should be retained by the utility. Silver Lake should charge the customers in the added territory the rates and charges contained in its tariff until authorized to change by this Commission in a subsequent proceeding. Within 90 days from the date of the order approving certificate, the applicant should submit an executed and recorded lease agreement for the land for the existing wells.

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Issue 2: Should this docket be closed?

Recommendation: No. The docket should remain open to allow the utility time to file the executed and recorded copy of the long-term lease. The docket should be closed administratively upon receipt of the executed and recorded copy of the long-term lease. (Fleming)

Staff Analysis: The docket should remain open to allow the utility time to file the executed and recorded copy of the long-term lease. The docket should be closed administratively upon receipt of the executed and recorded copy of the long-term lease.

SILVER LAKE UTILITIES, INC.

DESCRIPTION OF TERRITORY SERVED

Water Service Area

Highlands County

A parcel of land located in Sections 1, 2, 3, 11, 12, 13 and 14 in Township 36 South, Range 29 East and in Section 7 in Township 36 South, Range 30 East, Highlands County, Florida being more particularly described as follows:

Beginning at the Southeast corner of Section 1, Township 36 South, Range 29 East, said point also being the Northwest corner of Section 7, Township 36 South, Range 30 East; Thence East, along the North line of said Section 7, to the East line of the West 330 feet of the Northwest quarter; Thence South, along said East line to the point of intersection with the South line of the North 1320 feet of the Northwest quarter; Thence West, along said South line to the West line of said Section 7, said line also being the East line of Section 12, Township 36 South, Range 29 East; Thence South along the East line of Section 12 and Section 13, Township 36 South, Range 29 East to the ordinary high water line of Lake Apthorpe; Thence meander along said ordinary high water line Southwesterly and Westerly to the West line of the Northeast quarter of the Southeast quarter of said Section 13; Thence North, along said West line to the South line of the North one-half of said Section 13; Thence West along said South line to the ordinary high water line of S.E. Lake Nellie; Thence Northerly, Westerly and Southerly along said ordinary high water line back to the aforesaid South line of the North one-half of said Section 13; Thence West along said South line and along the South line of the North one-half of Section 14, Township 36 South, Range 29 East; to a line 200 feet East of and parallel with, as measured at right angles to, the Easterly right-of-way line of U.S. Highway 27; Thence Northerly along said line, a distance of 447.50 feet; Thence Westerly departing said line, a distance of 200 feet, to the aforesaid Easterly right-of-way line of U.S. Highway 27; Thence Northerly along said Easterly right-of-way line to the North line of said Section 14; said line also being the South line of Section 11, Township 36 South, Range 29 East; Thence West along said South line to the Southwest corner of said Section 11; Thence North along the West line of said Section 11 to the North line of the South one-half of the Northwest quarter of said Section 11; Thence East along said North line to the East right-of-way line of aforesaid U.S. Highway 27; Thence Northwesterly along said Easterly right-of-way line to the North line of the South one-half of Section 3, Township 36 South, Range 29 East; Thence East along said North line and along the North line of the South one-half of Section 2, Township 36 South, Range 29 East, to the Easterly right-of-way line of County Road 17; Thence Southerly along said Easterly right-of-way line to the South line of the North one-half of the North one-half of the North one-half of the South one-half of said Section 2; Thence East along said South line to the East line of said Section 2, said line also being the West line of aforesaid Section 1, Township 36 South, Range 29 East; Thence continue East along the South line of the North one-half of the Northwest quarter of the Northwest quarter of the Southwest quarter of said Section 1 to the East line of the Northwest quarter of the Northwest quarter of the Southwest quarter of said Section 1; Thence North along said East line to the North line of the South one-half of said Section 1; Thence East along said North line to the Northeast corner of the Northwest quarter of the Southeast quarter of said

Section 1; thence South along the East line of said Northwest quarter of the Southeast quarter to the Southeast corner of said Northwest quarter of the Southeast quarter, said point also being the Northwest corner of the Southeast quarter of the Southeast quarter of said Section 1; Thence East along the North line of said Southeast quarter of the Southeast quarter to the Northeast corner of said Southeast quarter of the Southeast quarter of said Section 1; Thence South, along the East line of said Section 1, to the Southeast corner of said Section 1 and the Point of Beginning.

Also including any portion of said S.E. Lake Nellie that may be determined to be privately owned by Lykes Bros, Inc.

FLORIDA PUBLIC SERVICE COMMISSION

authorizes

Silver Lake Utilities, Inc.
pursuant to
Certificate Number 636-W

to provide water service in Glades and Highlands Counties 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 superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-07-0717-FOF-WS *	09/04/2007 *	060726-WS 080213-WU	Original Certificate Amendment

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