

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-**

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**DATE:** April 26, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (M. Watts, Thompson)  
Office of the General Counsel (Mapp) *KEM* *RS* *FW* *MS*

**RE:** Docket No. 20170142-SU – Application for amendment of Certificate No. 137-S for extension of wastewater service territory in Brevard County, by Merritt Island Utility Company, Inc.

**AGENDA:** 05/08/18 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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## Case Background

On June 12, 2017, Merritt Island Utility Company, Inc. (MIU or Utility) filed an application with the Florida Public Service Commission (Commission) to amend Certificate No. 137-S to add territory in Brevard County. When MIU acquired the wastewater system and Certificate No. 137-S in 2017,<sup>1</sup> the previous owner was serving the territory requested in the instant docket.

Mobile Home Investors, Inc. was initially granted a certificate to operate a wastewater system in existence in 1974.<sup>2</sup> In 1976, the Florida Public Service Commission (Commission) approved the

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<sup>1</sup>Order No. PSC-2017-0366-PAA-SU, issued September 27, 2017, in Docket No. 20170018-SU, *In re: Application to transfer wastewater system and Certificate No. 137-S in Brevard County from Colony Park Development Utilities, LLC to Merritt Island Utility Company, Inc.*

<sup>2</sup>Order No. 6365, issued December 2, 1974, in Docket No. 73391-S, *In re: Application of MOBILE HOME INVESTORS, INC., for a certificate to operate an existing sewer utility in Brevard County, Florida.*

transfer of the wastewater system and Certificate No. 137-S to Colony Park Utilities, Inc.<sup>3</sup> In 2003<sup>4</sup> and 2007,<sup>5</sup> the Utility was granted transfers of majority organizational control, and in 2014 the wastewater system and Certificate No. 137-S were transferred to Colony Park Development Utilities, LLC (CPDU).<sup>6</sup> In each of these transactions, the sale included both the Utility and the Colony Park mobile home park.

CPDU subsequently sold the mobile home park and the wastewater system to Colony Waste Services, LLC (CWS) in 2016. CPDU and CWS did not file an application for transfer of the system and wastewater certificate at that time. CWS did not want the wastewater system, and sold it to MIU, who then filed an application for transfer.<sup>7</sup> During the pendency of Docket No. 20170018-SU, staff and MIU determined that the wastewater treatment plant was serving customers outside the certificated territory. This recommendation addresses the Utility's request to extend its wastewater service territory. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes (F.S.).

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<sup>3</sup>Order No. 7296, issued June 28, 1976, in Docket No. 750664-S, *In re: Application of MOBILE HOME INVESTORS, INC., and COLONY PARK UTILITIES, INC. for approval of the transfer of assets and Certificate No. 137-S from the former to the latter. (Section 367.071, Florida Statutes).*

<sup>4</sup>Order No. PSC-03-0320-FOF-SU, issued March 6, 2003, in Docket No. 020930-SU, *In re: Application for transfer of majority organizational control of Colony Park Utilities, Inc. holder of Certificate No. 137-S in Brevard County, from Robert Warren, Lenore Warren, William Warren, and Carol Kendall to Eileen Rogow, Arthur Rogow, and Philip Young.*

<sup>5</sup>Order No. PSC-07-0420-FOF-SU issued May 14, 2007, in Docket No. 060636-SU, *In re: Application for transfer of majority organizational control of Colony Park Utilities, Inc., holder of Certificate No. 137-S in Brevard County from Eileen Rogow to Michael Abramowitz.*

<sup>6</sup>Order No. PSC-14-0673-PAA-SU, issued December 5, 2014, in Docket No. 120285-SU, *In re: Application to transfer wastewater facilities and Certificate No. 137-S in Brevard County from Colony Park Utilities, Inc. to Colony Park Development Utilities, LLC.*

<sup>7</sup>Order No. PSC-2017-0366-PAA-SU, issued September 27, 2017, in Docket No. 20170018-SU, *In re: Application to transfer wastewater system and Certificate No. 137-S in Brevard County from Colony Park Development Utilities, LLC to Merritt Island Utility Company, Inc.*

## Discussion of Issues

**Issue 1:** Should the Commission approve Merritt Island Utility Company, Inc.'s application for amendment of Certificate No. 137-S to extend its wastewater territory in Brevard County?

**Recommendation:** Yes. It is in the public interest to amend Certificate No. 137-S to include the territory as described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as MIU's amended certificate and should be retained by the Utility. The Utility should continue charging the customers in the territory added herein the rates and charges contained in its current tariff until a change is authorized by the Commission in a subsequent proceeding. (M. Watts)

**Staff Analysis:** The Utility's application to amend its authorized service territory is in compliance with the governing statute, Section 367.045, F.S., and Rule 25-30.036, Florida Administrative Code (F.A.C.), Application for Amendment to Certificate of Authorization to Extend or Delete Service Area. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C., Notice of Application and of Customer Meeting. No objections to the application have been received and the time for filing such has expired.

MIU provided adequate service territory maps and territory descriptions to the Commission. According to the application, the provision of wastewater services in the proposed service territory is consistent with the North Merritt Island Small Area Plan Study. As stated in the case background, when MIU acquired the Utility, the proposed additional service territory, serving approximately 75 equivalent residential connections, was already being served by the previous owner. Based on a review of the annual reports filed for the system, it appears that wastewater service was extended to the additional territory in the 1995 through 1996 time frame by Colony Park Utilities, Inc., who held Certificate No. 137-S from 1976 to 2014.

The Utility stated in its application that the existing customers (including those in the proposed extended service area) are served by a 0.070 million gallon per day treatment plant permitted on an annual average daily flow basis from the Florida Department of Environmental Protection (DEP). The system is built out and existing collection lines are sized to serve the customers currently being served.

The Utility was granted a rate increase in 2008,<sup>8</sup> and at that time, the Commission found the overall quality of service of the Utility to be satisfactory and there currently appear to be no outstanding Consent Orders or Notices of Violation from the DEP. Based upon staff's review of the financial information provided in this docket, the Utility's financial ability to operate a utility has not diminished since the Utility's 2008 rate case. The Utility has filed its 2017 Annual Report and is current with the payment of its 2017 Regulatory Assessment Fees (RAFs). Based on the foregoing analysis, staff recommends that MIU has the financial and technical ability to service the amended territory.

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<sup>8</sup>Order No. PSC-08-0760-PAA-SU, issued November 17, 2008, in Docket No. 080104-SU, *In re: Application for staff-assisted rate case in Brevard County by Colony Park Utilities, Inc.*

**Conclusion**

Based on the information above, staff recommends it is in the public interest to amend Certificate No. 137-S to include the territory as described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as MIU's amended certificate and should be retained by the Utility. The Utility should continue charging the customers in the territory added herein the rates and charges contained in its current tariffs until a change is authorized by the Commission in a subsequent proceeding.

**Issue 2:** Should Merritt Island Utility Company, Inc. be required to show cause why it should not be fined for an apparent violation of Section 367.045(2), F.S., for serving customers outside of its Commission approved territory?

**Recommendation:** No. Staff recommends that the Utility's apparent violation of Section 367.045(2), F.S., does not rise to the level which warrants the initiation of a show cause proceeding. Therefore, MIU should not be required to show cause for serving customers outside of its Commission approved territory. (Mapp)

**Staff Analysis:** Pursuant to Section 367.045(2), F.S., 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. Section 367.161(1), F.S., 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, F.S. By serving customers outside of its certificated territory without obtaining an amended certificate of authorization, the Utility's act was "willful" within the meaning of Section 367.161, F.S. Utilities are charged with the knowledge of the Commission's statutes and rules. Thus, any intentional act, such as MIU providing wastewater service beyond the boundaries of Certificate No. 137-S, without first obtaining a certificate of authorization from the Commission, would meet the standard for a "willful violation" of Section 357.161(1), F.S.

In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, 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"; see also Order No. PSC-99-2390-FOF-WU, Issued on December 7, 1999, in Docket No. 980543-WU, In re: Application for amendment of Certificate No. 363-W to add territory in Marion County by Sunshine Utilities of Central Florida, Inc., (finding that the utility's apparent violation of Section 367.045, F.S., did not warrant the initiation of a show cause proceeding). Additionally, "it is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404,411 (1833).

Although MIU'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), F.S., there are mitigating circumstances. When MIU acquired the Utility, the proposed additional service territory, approximately 75 ERCs, was already being served by the previous owner. During the evaluation of MIU's transfer application, Docket No. 20170018-SU, when it was discovered that the Utility was serving outside of its certificated territory, MIU immediately filed the instant application to correct that oversight by requesting the territory be added to its service area. Additionally, the Utility has paid RAFs on these customers.

Based on the foregoing, staff recommends that the Utility's apparent violation of Section 367.045(2), F.S., does not rise to the level which warrants the initiation of a show cause proceeding. Therefore, Merritt Island Utility Company, Inc. should not be required to show cause for failure to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

**Issue 3:** Should this docket be closed?

**Recommendation:** If the Commission approves staff's recommendations in Issues 1 and 2, no further action will be necessary, and this docket should be closed upon issuance of the order. (Mapp)

**Staff Analysis:** If the Commission approves staff's recommendations in Issues 1 and 2, no further action will be necessary, and this docket should be closed upon issuance of the order.

Merritt Island Utility Company, Inc.  
Brevard County  
Description of Wastewater Territory

TERRITORY TO BE ADDED:

**Colony Park North - Unit 3**

A portion of the South ½ of the S.E. ¼ of Section 15, Township 23 S, Range 36 E, Brevard County, Florida, being more particularly described as follows: Commence at the N.E. Corner of the South ½ of the S.E. ¼ of aforesaid Section 15; thence S 88° 09' 37" W along the north line of the South ½ of the S.E. ¼ of said Section 15, a distance of 1,547.55 feet to the Point of Beginning of the lands herein described; thence continue S 88° 09' 37" W along the north line of the S.E. ¼ of said Section 15, a distance of 1,085.06 feet to the N.W. corner of the S ½ of the S.E. ¼ of said Section 15; thence S 00° 41' 31" E along the west line of the S.E. ¼ of said Section 15, a distance of 239.77 feet; thence N 89° 18' 29" E a distance of 205.00 feet; thence S 00° 41' 31" E a distance of 66.18 feet; thence N 88° 09' 37" E a distance of 450.09 feet; thence N 88° 09' 42" E a distance of 50.01 feet; thence N 88° 09' 37" E a distance of 242.01 feet; thence S 84° 54' 05" E a distance of 498.64 feet; thence N 89° 20' 56" E a distance of 321.53 feet; thence N 00° 39' 04" W along the west line of Colony Park North Unit 2 as recorded in the Plat Book 24, Page 74, Brevard County Public Records, and its extension, a distance of 105.00 feet; thence S 89° 20' 56" W along the west line of said Colony Park North Unit No. 2, a distance of 5.00 feet; thence N. 00° 39' 04" W. along the west line of said Colony Park North Unit No. 2, and its extension, a distance of 231.88 feet; thence S 89° 00' 32" W a distance of 675.01 feet; thence N 00° 39' 04" W a distance of 30.00 feet to the Point of Beginning. Containing 12.48 acres more or less.

**Mission Acres**

The South ½ of the SW ¼ of the SW ¼ of Section 14, Township 23 South, Range 36 East, lying West of now existing County Road, being more particularly described as follows: Commence from The Point of Beginning being the Southwest corner of Section 14, Township 23 South, range 36 East; thence N 89° 54' 47" E along the South line of said Section 14 for a distance of 1,163.12 feet to a point on the Westerly right of way line of McGruder Road; thence N 33° 56' 42" E along said Westerly right of way for a distance of 286.74 feet to a point on the East line of the South ½ of the SW ¼ of the SW ¼ of said Section 14; thence go Northerly along the East line of the South ½ of the SW ¼ of the SW ¼ of said Section 14, N 0° 06' 25" E for a distance of 91.67 feet to a point being the Northeast corner of the South ½ of the SW ¼ of the SW ¼ of said Section 14; thence run along the North line of the South ½ of the SW ¼ of the SW ¼, West for a distance of 1,323.41 feet to a point being the Northwest corner of the South ½ of the SW ¼ of the SW ¼ of said Section 14; thence run Southerly along the West line of said Section 14, S 0° 03' 05" E for a distance of 330.00 feet to the Point of Beginning, said parcel contains 9.580 acres more or less; less and except the West 30.00 feet thereof.



COMPOSITE WASTEWATER TERRITORY

In Township 23 South, Range 36 East, Brevard County, Florida

Section 14 & 15

Begin at the Southwest corner of said Section 14, Township 23 South, Range 36 East, which is also the Point of Beginning; thence run North 89° 54' 47" East along the South line of said section 14 for a distance of 1163.12 feet to a point on the Westerly right of way line of a County Road; thence North 33° 56' 42" East along said Westerly right of way line for a distance of 286.74 feet to a point on the East line of the South ½ of the SW ¼ of the SW ¼ of said section 14; thence go North 0° 06' 25" East for a distance of 91.67 feet; thence run North 75° 28' 48" West for a distance of 25.08 feet; thence North 2° 00' 24" West for a distance of 985.22 feet; thence South 89° 11' 06" West for a distance of 569.57 feet; thence South 0° 48' 54" East for a distance of 10 feet; thence South 87° 05' 16" West a distance of 710.58 feet; thence South 0° 39' 04" East, 30.99 feet; thence North 89° 35' 04" West, 477.03 feet; thence South 0° 38' 31" West, 25 feet; thence South 68° 21' 32" West, 84.30 feet; thence South 76° 38' 12" West, 83.63 feet; thence South 89° 20' 56" West, 234.00 feet; thence North 0° 56' 37" West, 81.56 feet; thence South 89° 00' 32" West, 675.01 feet; thence North 00° 39' 04" West, 30.00 feet; thence South 88° 09' 37" West, 1,085.06 feet; thence South 0° 41' 31" East, 239.77 feet; thence North 89° 18' 29" East, 205.00 feet; thence South 0° 41' 31" East, 66.18 feet; thence North 88° 09' 37" East, 742.10 feet; thence South 84° 34' 05" East, 498.64 feet; thence North 89° 20' 56" East, 319.55 feet; thence South 00° 39' 04" West, 384.45 feet; thence South 87° 45' 45" West, 358.30 feet; thence South 02° 14' 15" East, 150.00 feet to a point on the South boundary of St. Charles Avenue; thence Westerly 30 feet more or less; thence South 02° 14' 15" East, 400.00 feet; thence North 88° 7' 24" East, 1,251.15 feet, more or less to the Point of Beginning.

**FLORIDA PUBLIC SERVICE COMMISSION**

**Authorizes**

**Merritt Island Utility Company, Inc.**

**Pursuant to**

**Certificate Number 137-S**

to provide wastewater service in Brevard County 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>
6365	12/02/1974	73391-S	Original Certificate
7296	06/28/1976	750664-S	Transfer
PSC-03-0320-FOF-SU	03/06/2003	020930-SU	Transfer of Majority Organizational Control
PSC-07-0420-FOF-SU	05/14/2007	060636-SU	Transfer of Majority Organizational Control
PSC-14-0673-PAA-SU	12/05/2014	120285-SU	Transfer
PSC-2017-0366-PAA-SU	09/27/2017	20170018-SU	Transfer
• -	*	20170142-SU	Amendment