

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: September 28, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Salvador, M. Watts) *WLS*
Office of the General Counsel (Schrader) *KS meet for JSB*

RE: Docket No. 20180134-WU – Application for quick-take amendment of Certificate No. 450-W in Lake County by Pine Harbour Waterworks, Inc.

AGENDA: 10/11/18 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: This item should precede Docket No. 20180022-WU - Application for staff-assisted rate case in Lake County by Pine Harbour Waterworks, Inc.

Case Background

On July 10, 2018, Pine Harbour Waterworks, Inc. (Pine Harbour or Utility) filed an application to amend Certificate No. 450-W, in order to expand its existing territory to include seven current customers that are located outside of, and adjacent to, its certificated area in Lake County. Pine Harbour provides water service to approximately 65 customers. When Pine Harbour acquired the water system in 2016, the previous owner was serving six of the seven customers located outside of the certificated territory. In 2017 Pine Harbour added the seventh customer located outside of its certificated territory.

The Utility has been under Florida Public Service Commission (Commission) jurisdiction since October 22, 1985.¹ The Commission granted Certificate No. 450-W to Mr. Earl W. Stockwell in 1990 and this certificate was subsequently transferred to Mr. Jim C. Branham in 1991.² Upon Mr. Branham's death on April 14, 2007, the Utility became a part of his estate. On May 11, 2007, the Circuit Court for Lake County, Florida appointed Ms. Sandra Wesson as personal representative of the Estate of Jim C. Branham. During the probate of Mr. Branham's Estate, the Court granted Ms. Wesson authority to manage and operate the Utility. The Commission subsequently transferred the certificate to Pine Harbour Water Utilities, LLC on October 6, 2008.³

The Commission approved the transfer of the water system and Certificate No. 450-W to Pine Harbour Waterworks, Inc. on February 2, 2017.⁴ On January 23, 2018, Pine Harbour filed an application for staff-assisted rate case.⁵ During Commission staff's review of the submitted application, supporting documentation, and the legal territory description in that docket, staff discovered that the Utility is serving seven customers outside of its certificated territory.

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

¹ Order No. 15285, issued October 22, 1985, in Docket No. 19850417-WU, *In re: Application of Earl W. Stockwell for a certificate to provide water service to the Pine Harbour Subdivision in Lake County, Florida pursuant to the provisions of Section 367.041, Florida Statutes.*

² Order No. 24273, issued March 21, 1991, in Docket No. 19900525-WU, *In re: Application for transfer of Certificate No. 450-W from Mr. Earl W. Stockwell to Pine Harbour Water Utilities, Inc. in Lake County.*

³ Order PSC-08-0645-FOF-WU, issued October 6, 2008, in Docket No. 20080269-WU, *In re: Application for authority to transfer water Certificate No. 450-W, held by Pine Harbour Water Utilities, from Jim C. Branham to Pine Harbour Water Utilities, LLC, in Lake County.*

⁴ Order No. PSC-17-0043-PAA-WU, issued February, 2, 2017, in Docket No. 20160169-WU, *In re: Application for authority to transfer water system and Certificate No. 450-W from Pine Harbour Water Utilities, LLC to Pine Harbour Waterworks, Inc. in Lake County.*

⁵ Docket No. 20180022-WU, *In re: Application for staff-assisted rate case in Lake County by Pine Harbour Waterworks, Inc.*

Discussion of Issues

Issue 1: Should Pine Harbour 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. A show cause proceeding for Pine Harbour's potential violation of Section 367.045, F.S., should not be initiated as it appears that the Utility unknowingly serviced customers outside of its certificated territory. Such conduct would not be a willful violation of Chapter 367, F.S., or a lawful rule or order of the Commission, and thus, would not be subject to penalties pursuant to Section 367.161, F.S. (Schrader)

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 may have been "willful" within the meaning of Section 367.161, F.S. Willfulness is a question of fact. *Fugate v. Fla. Elections Comm'n*, 924 So. 2d 74, 76 (Fla. 1st DCA 2006). Utilities are charged with the knowledge of the Commission's statutes and rules; however a mere technical violation of a statute or rule, even when the underlying act is intentional in nature, may not rise to the level of a "willful" violation.

The term "willful" is not defined in Chapter 367, F.S. The plain meaning of "willful" typically applied by Florida courts, in the absence of a statutory definition, is that an act or omission must be "voluntarily and intentionally performed with specific intent and bad purpose to violate or disregard the requirements of the law." *Fugate* at 76. With this standard in mind, an important distinction can be drawn between a water or wastewater utility intentionally providing service to customers that are located outside of its certificated territory, but, not knowing those customers to be so located; and a water or wastewater utility providing service to customers it knows are outside of its service territory.

Pine Harbour asserts that its service of customers outside of its certificated territory was unknowing,⁶ and, given the totality of facts in this docket and Docket 20180022-WU, staff finds this assertion to be credible. When Pine Harbour acquired the utility, 6 of the 7 homes currently being serviced outside of the certificated territory were already being served by the previous owner. Furthermore, during staff's evaluation of Pine Harbour's legal territory description in its staff-assisted rate case, Docket No. 20180022-WU, when Commission Staff notified the Utility that it was serving customers outside of its certificated territory, Pine Harbour immediately filed the instant application to correct its oversight by requesting the territory be added to its service area.

⁶ Response to staff's third data request, page 1, in docket No. 20180022-WU, *In re: Application for staff-assisted rate case in Lake County by Pine Harbour Waterworks, Inc.*

Based on the foregoing, staff recommends that the Pine Harbour'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, Pine Harbour 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 2: Should the Commission acknowledge Pine Harbour Waterworks, Inc.'s quick-take application to amend Certificate No. 450-W to extend its service territory in Lake County?

Recommendation: Yes. The Commission should acknowledge Pine Harbour's application to extend its service territory. The rates and charges approved by the Commission for Pine Harbour's service area should be applied to the customers in the new service territory. The resultant order should serve as Pine Harbour's amended certificate and it should be retained by the Utility. (Salvador)

Staff Analysis: On July 10, 2018, Pine Harbour filed an application to amend Certificate No. 450-W in Lake County, pursuant to Rule 25-30.036, Florida Administrative Code (F.A.C.). Pine Harbour completed the application on September 16, 2018. The requested territory is contiguous to the Utility's existing service territory and is limited to the area occupied by the seven customers currently located outside of its certificated territory. Beyond these seven specified customers, additional customers are not being added pursuant to this amendment.

The application complies with the governing statute, Section 367.045(2), F.S. The Utility has provided an adequate territory description and service territory maps as prescribed by Rule 25-30.036(2)(f) and (h), F.A.C. The territory description is appended to this recommendation as Attachment A. The Utility has submitted an affidavit, consistent with Section 367.045(2)(d), F.S., that it has tariffs and annual reports on file with the Commission.

Staff recommends that the rates and charges approved by the Commission for Pine Harbour's service area should be applied to the customers in the new service territory. The Utility has filed a revised tariff sheet incorporating this additional territory into its tariff.

The Utility has satisfied all of the conditions required by Rule 25-30.036(3) F.A.C. No protests have been filed in this docket, and the time for doing so has expired. Therefore, the Commission should approve the request for a quick-take amendment to extend the service territory.

Conclusion

Based on the above information, the Commission should acknowledge Pine Harbour's application to extend its service territory. The rates and charges approved by the Commission for Pine Harbour's service area should be applied to the customers in the new service territory. The resultant order should serve as Pine Harbour's amended certificate and it should be retained by the Utility.

Issue 3: Should this docket be closed?

Recommendation: Yes. No further action is necessary in this docket; it should be closed upon issuance of a Final Order. (Schrader)

Staff Analysis: No further action is necessary in this docket; it should be closed upon issuance of a Final Order.

**Pine Harbour Waterworks, Inc.
Lake County**

Territory to be added: A, B and C

Pine Harbour Waterworks, Inc. - Water System Service Territory (A)

A Utility Service Territory located within Section 31, Township 18 South, Range 26 East, Lake County, Florida. From the Southeast corner of Section 31, run North 89° 39' 9.17" West, 3,217.54 feet to the Point of Beginning "A". From said Point of Beginning run North 0° 23' 48.20" West, 347.51 feet; thence South 54° 50' 1.11" West, 590.59 feet; thence South 89° 7' 56.32" East, 485.26 feet to the Point of Beginning "A".

Pine Harbour Waterworks, Inc. - Water System Service Territory (B)

A Utility Service Territory located within Section 6, Township 19 South, Range 26 East, Lake County, Florida. From the Northeast corner of Section 6, run South 75° 12' 5.73" West, 3,883.18 feet to the Point of Beginning "B". From said Point of Beginning run South 0° 57' 41.79" West, 136.79 feet; thence South 39° 50' 55.58" East, 32.61 feet; thence South 89° 36' 33.95" East, 63.72 feet; thence North 0° 28' 13.82" East, 138.73 feet; thence North 74° 13' 53.21" West, 86.71 feet to the Point of Beginning "B".

Pine Harbour Waterworks, Inc. - Water System Service Territory (C)

A Utility Service Territory located within Section 6, Township 19 South, Range 26 East, Lake County, Florida. From the Northeast corner of Section 6, run South 68° 39' 41.22" West, 2,814.06 feet to the Point of Beginning "C". From said Point of Beginning run South 0° 23' 25.65" West, 137.58 feet; thence South 89° 36' 34.04" East, 425 feet; thence North 1° 9' 3.43" East, 133.63 feet; thence North 89° 4' 37.80" West, 426.79 feet to the Point of Beginning "C".

Resulting Water Territory

A Utility Service Territory located within Section 6, Township 19 South, Range 26 East, and Section 31, Township 18 South, Range 26 East, Lake County, Florida. From the Northeast corner of Section 6, run North 89° 44' 52" West 2,720 feet to the Point of Beginning. From said Point of Beginning run North 89° 7' 24" West 487.87 feet; thence North 0° 23' 48" West 347.51 feet; thence South 55° 14' 42" West 640 feet; thence South 0° 57' 42" West 1,129.22 feet; thence South 39° 50' 56" East 32.61 feet; thence South 89° 19' 46" East 63.72 feet; thence North 0° 23' 26" East 139.05 feet; thence South 89° 31' 46" East 1,050 feet; thence South 0° 23' 26" West 137.58 feet; thence South 89° 36' 34" East 425 feet; thence North 1° 9' 3" East 347 feet; thence North 27° 19' 14" West 541.61 feet; thence North 62° 15' 52" West 297.75 feet; thence North 6° 29' 36" West 211.13 feet to the Point of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION

**Authorizes
Pine Harbour Waterworks, Inc.
Pursuant to
Certificate Number 450-W**

To provide water service in Lake County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rule, 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>
Order No. 15285	10/22/1985	850417-WU	Original Certificate
Order No. 24273	03/21/1991	900525-WU	Transfer of Certificate
PSC-08-0645-FOF-WU	10/06/2008	080269-WU	Transfer of Certificate
PSC-17-0043-PAA-WU	02/02/2017	160169-WU	Transfer of Certificate
*	*	20180134-WU	Amendment

*** Order Numbers and dates to be provided at time of issuance**