

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of ) DOCKET NO. 950186-WS  
new class of service to provide ) ORDER NO. PSC-96-0596-FOF-WS  
for bulk service in Citrus ) ISSUED: May 7, 1996  
County by Rolling Oaks )  
Utilities, Inc. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING REVISED BULK SERVICE AGREEMENT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Rolling Oaks Utilities, Inc. (Rolling Oaks or utility) is a Class B utility which provides water and wastewater service in Citrus County. Rolling Oaks is located in a Water Use Caution Area as designated by the Governing Board of the Southwest Florida Water Management District. The utility provides approximately 5,456 customers with water and 3,988 customers with wastewater service. In 1993, Rolling Oaks reported operating revenues of \$751,936 and \$925,936, and a net operating income of \$45,601 and \$75,493, for its water and wastewater systems, respectively.

On February 16, 1995, a Special Service Availability Agreement (original agreement) between Rolling Oaks and George Wimpey of Florida, Inc., was filed with the Commission, pursuant to Section 367.101, Florida Statutes. This original agreement consisted of a Bulk Service Agreement and an Amendment to Agreement for Provision of Potable Water Supply and Sanitary Sewage Treatment and Disposal,

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both dated December 23, 1994. Along with the original agreement, the utility requested approval for a new class of service to provide bulk service, and a proposed tariff sheet, pursuant to the provisions of the agreement.

By Order No. PSC-95-0730-FOF-WS, issued June 20, 1995, the Commission denied the original agreement, new class of service, and proposed tariff sheet. By that Order, the Commission outlined those aspects of the original agreement that were acceptable, as well as those that were not acceptable. In addition, the Commission recognized that the parties had engaged in negotiations prior to submitting the original agreement and encouraged the parties to continue negotiations in order to reach an acceptable bulk service agreement. Further, the Commission recommended that the parties work with our staff to facilitate our review and acceptance of the agreement.

In an attempt to comply with that Order, the parties continued their negotiations and worked with our staff to resolve those areas of the original agreement that were unacceptable to us. As a result, on February 20, 1996, a revised Bulk Service Agreement (revised agreement) was submitted.

#### REVISED BULK SERVICE AGREEMENT

The revised agreement between Rolling Oaks and George Wimpey of Florida, Inc., was filed with the Commission, pursuant to Section 367.101, Florida Statutes. The revised agreement provides for bulk service by Rolling Oaks to two subdivision phases, which at buildout will total 269 equivalent residential connections (ERCs).

According to the revised agreement, George Wimpey, the developer, will convey to the subdivision's homeowners' association the on-site water and wastewater utility systems. Thus, the homeowners' association will be the customer of Rolling Oaks for water and wastewater service. It should be noted that, according to Page 2, paragraph (1)(e) of the revised agreement, the definition of "developer" includes any successors, assigns, and later owners. We interpret this to include the homeowners' association, once it receives ownership of the utility systems. It should also be noted that the developer has agreed to meter all water service connections within the subdivision phases. An application for exemption of the homeowners' association from Commission regulation is being processed in Docket No. 950281-WS, pursuant to Section 367.022(7), Florida Statutes.

Two concerns with the original agreement related to the base facility charge and to the wastewater gallonage charge. By Order No. PSC 95-0730-FOF-WS, we stated that it would be appropriate for Rolling Oaks to resubmit a bulk service agreement and the corresponding proposed tariff sheets reflecting the actual cost to serve the proposed development, including a gallonage cap for the wastewater service. The parties have complied by revising the original agreement and submitting it for our approval.

In the original agreement, the base facility charge did not reflect a reduction of costs which would result from the developer's responsibility for maintaining the distribution and collection lines in the proposed development, as well as for meter reading and billing. However, the revised agreement reflects a reduction based on the actual costs specifically associated with serving George Wimpey.

Moreover, the revised agreement proposes that the base facility charge be the greater of the general service charge for the size meter utilized in providing such bulk service or the general service base facility charge for a 5/8" x 3/4" meter multiplied by the number of ERCs behind the bulk service meter in any given month. The revised agreement also provides further protection for the homeowners by stating that the developer shall ensure payment of any excess charge resulting from there being fewer ERCs behind the bulk service meter than are actually allowed for through the bulk service rate based on meter size. The revised agreement states that the charge shall be paid by the developer so long as an excess exists, and that none of the residential or commercial customers behind the bulk meter will be assessed an individual charge intended to recover that excess from those individual customers behind the bulk meter.

The billing arrangement described above is acceptable for this utility and developer because, at the time of filing, 80 ERCs already existed behind the bulk service meter. Therefore, the utility has not been in the position of collecting excessive revenues due to fewer ERCs being served than the bulk service meter rate allows. Had the utility been serving less than 80 ERCs through the bulk service meter, it would have collected an inequitable revenue amount compared with the number of ERCs receiving service.

The second billing concern regarded the wastewater gallonage cap. The original agreement did not include a wastewater gallonage cap. Therefore, to comply with Order No. PSC-95-0730-FOF-WS, the revised agreement includes a wastewater gallonage cap of 6,000 gallons per bill. We find this cap to be reasonable.

By Order No. PSC-95-0730-FOF-WS, we noted additional concerns with the original agreement which related to certain penalties assessed by the utility. One such concern related to underbillings which could occur due to inaccuracies on the part of the developer in drafting the monthly reports which contain the number and size of connections receiving service through the point of delivery. The implementation of this rate system would require reporting by the developer to the utility, on a monthly basis, the exact number of ERCs on the developer's side of the bulk service meter. We found the penalty assessed in the original agreement to be excessive and encouraged the parties to make an effort to determine a more appropriate penalty. The revised agreement has been modified to reflect a lesser penalty. Rather than a penalty of 50% of the backbilled amount plus 10% per annum interest, the revised agreement penalizes the developer 15% of the backbilled amount plus interest at 6% per annum. We believe the revised penalty is more appropriate.

By Order No. PSC-95-0730-FOF-WS, we also found that although some reasonable penalty possibly should be assessed to protect the utility from noncompliance with the terms of the agreement by the developer, discontinuance of service as the initial penalty was too severe and was not in the public interest. Moreover, we found certain of the provisions for discontinuance of service to be in direct violation of Rule 25-30.320(2)(g), Florida Administrative Code. We encouraged the parties to find other remedies available to the utility to ensure compliance with the provisions of the agreement which are more reasonable and equitable to the ultimate homeowners.

According to Rule 25-30.320(2)(g), Florida Administrative Code, a utility may refuse or discontinue service for nonpayment of bills or noncompliance with the utility's rules and regulations provided that the customer is given at least five working days' written notice and is allowed a reasonable time to comply with any rule or remedy any deficiency. Under the terms of the revised agreement, the utility continues to reserve the right to discontinue service to the developer and/or its successors or assigns and to refuse service to any new installation requesting service until such time as all applicable fees, costs, penalties, interest and backbilled amounts are paid. However, discontinuance of service for underbilling is an option for the utility only if the developer first fails to pay the considerably lesser penalty for underbilling as described above, and only after providing a twenty-day notice to the developer.

Finally, in several other paragraphs of the original agreement, a penalty was to be assessed and discontinuance of

service was to be allowed for various other reasons. See Order No. PSC-95-0730-FOF-WS at 6-7. The revised agreement provides for discontinuance of service only as a last resort, and, where necessary, upon written notice in accordance with Rule 25-30.320, Florida Administrative Code. Therefore, we find that the provisions for discontinuance of service under the revised agreement are acceptable.

The purpose of this revised bulk service arrangement is to reduce costs of providing water and wastewater service to the subdivision phases through the elimination of the transfer of on-site facilities to the utility, thereby eliminating the gross-up for tax impact on such transfer. Several unique aspects of this revised agreement make it different from most master metered type services. The billing methodology which considers the demand placed on the utility system behind the bulk meter, a wastewater gallonage cap, and a requirement by the utility that the distribution/collection system behind the master meter be maintained by the developer all contribute to the unique nature of this revised agreement. We find that the parties have made a diligent effort to make this type of arrangement more equitable than if the utility had simply applied its general service tariff.

Despite our denial of the original agreement, several aspects of that agreement were not only acceptable but commendable. The portions of the original agreement that were unacceptable, as outlined in Order No. PSC-95-0730-FOF-WS, have been modified as required by that Order. Therefore, we hereby approve the revised agreement submitted on February 20, 1996.

This docket shall be closed if no person whose interests are substantially affected by our proposed action files a protest within the twenty-one day protest period.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that the revised Bulk Service Agreement between Rolling Oaks Utilities, Inc., and George Wimpey of Florida, filed February 20, 1996, is hereby approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth

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in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 7th day of May, 1996.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Hizon  
Chief, Bureau of Records

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this Order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 28, 1996.

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In the absence of such a petition, this Order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this Order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.