BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a new classification of service entitled "Effluent for Spray Irrigation" by PALM COAST UTILITY CORPORATION in Flagler County.	DOCKET NO. 900315-WS ORDER NO. 23372 ISSUED: 8-20-90

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
FRANK S. MESSERSMITH

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING REQUEST FOR A NEW CLASS OF SERVICE

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 formal proceedings pursuant to Rule 25-22.029, Florida Administrative Code.

Palm Coast Utility Corporation (Palm Coast or utility), a wholly owned subsidiary of ITT provides water and wastewater service to approximately 7,238 water and 6,409 wastewater customers in Flagler County. On April 24, 1990, Palm Coast filed an application requesting a new class of service entitled "Effluent for Spray Irrigation." The application provided that the new classification would apply to the Dunes Community Development District (Dunes). The utility had an agreement with the Dunes to supply it with treated wastewater effluent at no charge.

The Dunes is a "local unit of special purpose government" created pursuant to Chapter 190, Florida Statutes. As such, by Order No. 18503, issued December 7, 1987, we found the Dunes to be exempt from our regulation under the governmental agency exemption, Section 367.022(2), Florida Statutes.

The purpose of the Dunes is to finance and manage the construction, maintenance and operation of the major infrastructures for Hammock Dunes, a 2,000 acre development, which will be developed primarily by a wholly owned subsidiary of ITT Community Development Corporation (ICDC). ICDC is a wholly owned

subsidiary of ITT. The Dunes' governing body is a five-member Board of Supervisors. Prior to October, 1991, as provided for by law, the Board will be elected by landowners in the District. Currently, the majority landowner is ICDC. However, as people move into the community and Hammock Dunes grows, supervisors will be elected by qualified electors as defined in Chapter 190, Florida Statutes.

Pursuant to the contract between Palm Coast and the Dunes, the utility is to provide secondary treated wastewater effluent to the Dunes at no charge. The effluent will initially be used for spray irrigation at the Hammock Dunes' golf course and will replace surface water which is the present means of irrigation. The Dunes has also asked the Department of Environmental Regulation to authorize the use of effluent to irrigate roads rights-of-way which are currently irrigated with potable water.

According to the contract, Palm Coast will furnish the wastewater effluent, when the utility determines it is available, to the inlet of the Dunes' pump station located at the utility's wastewater treatment plant. The Dunes is responsible for installing, owning and maintaining the pump station along with the necessary effluent force main from the pump station to the Dunes' wastewater treatment plant site. Once the effluent reaches the Dunes' pump station, all regulatory responsibility for permitting, additional treatment and monitoring of effluent disposal becomes that of the Dunes. Palm Coast will incur no cost to provide the effluent other than some minor out-of-pocket costs for which it will be reimbursed monthly by the Dunes. The contract may be cancelled by either party at any time as long as notice of intent to cancel is provided in writing by registered or certified mail at least eighteen calendar months prior to its effective date.

We have previously considered agreements between utilities and other entities for the provision of effluent for spray irrigation. The particular circumstances presented in each proceeding have been looked at to determine the alternative means of effluent disposal available to the utility and the alternative means of irrigation available to the recipient of the effluent. We have then evaluated the costs of the various alternatives available to the utility and to the recipient to determine the benefits received by each from their arrangement.

In proceedings in which we found the recipient of effluent to be the primary beneficiary of its use for irrigation, we have imposed a charge. See Order No. 17600, issued June 26, 1987. On the other hand, where the provision of effluent for spray irrigation is the utility's most cost efficient means of disposal,

no charge has been imposed. See Order No. 18551, issued December 15, 1987. In proceedings where both the utility and the recipeint benefit by the arrangement, we have provided for a charge that shares the cost of providing the effluent and is less than a full cost based charge. See Order No. 21430, issued June 23, 1989. In all instances in which we have determined the issue of whether a utility should charge for the provision of effluent, and if so, what that charge should be, we have done so as the result of a full rate case proceeding.

In Order No. 22468, issued January 24, 1990, we considered a situation similar to the one in the present case. There, Deltona Utilities, Inc. (Deltona) filed a request for a new class of service to provide treated effluent to a golf course for use as spray irrigation. The utility and the golf course had entered an agreement by which there would be no charge for the effluent. We declined to approve Deltona's request for a new class of service. We found that establishing a new class of service would be inappropriate because, first, it might send false signals that the utility was ready and able to satisfy a demand for effluent, when the utility was merely securing an alternative method of effluent disposal. Second, if a new class of service were established, a rate should be established at the same time. Third, and more importantly, a decision to establish a rate for effluent should be made in the context of a rate case where there is sufficient information to determine the prudence and reasonableness of establishing a charge for the provision of effluent.

We find that the facts in the present proceeding are similar to those presented to us in the Deltona case. The same reasons for declining to establish a new class of service exist here. In addition, since cost to the utility in providing the effluent does not seem to be a factor here, this case is similar to previous cases in which no charge has been required.

As in the Deltona case, the contract Palm Coast entered is a stand alone agreement with a single party. The contract is beneficial to the citizens of Flagler County and to the environment. It provides the utility an alternative means of effluent disposal and the Dunes a replacement for surface and potable water currently being used for irrigation. There is no impending demand for the effluent and the utility did not ask for this service to be offered as a general tariff item. The utility proposes no charge for the effluent, which seems appropriate because the utility appears to incur no cost to provide it.

Based on the facts as presented above, we deny the application of Palm Coast Utility Corporation for a new class of service. We note, however, that this decision should not be construed as disapproval of the utility's contract with the Dunes. Although the utility was prudent to submit its contract to us review, as in the Deltona case, we neither approve nor disapprove the contract.

It is, therefore,

ORDERED by the Florida Public Service Commission that Palm Coast Utility Corporation's request for a new class of service for effluent spray irrigation is hereby denied as set forth in the body of this Order. It is further

ORDERED that Palm Coast Utility Corporation's contract with the Dunes Community Development District will remain unaffected by this Order. It is further

ORDERED that this Order, issued as proposed agency action, shall become final, unless an appropriate petition in the form provided by Rule 25-22, Florida Administrative Code, is received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that in the event no protest is timely filed, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 20th day of AUGUST, 1990.

STEVE TRIBBLE, 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 120.59(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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on September 10, 1990.

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, and as reflected in a subsequent order.

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 adversely 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 sewer 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.