

MEMORANDUM

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MAR 06 1998

March 6, 1998

1:30  
FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CROSSBY) *AS*

RE: DOCKET NO. 961014-MS - APPLICATION FOR CERTIFICATES UNDER GRANDFATHER RIGHTS TO PROVIDE WATER AND WASTEWATER SERVICE BY CRYSTAL RIVER UTILITIES, INC. IN POLK COUNTY

98-0371-FDE-WIS

Attached is an ORDER RESCINDING ORDER NO. PSC-97-1048-FOF-MS, RESTATING FINDINGS AND CLARIFYING NOTICING REQUIREMENTS AND NOTICE OF PROPOSED AGENCY ACTION ORDER GRANTING GRANDFATHER CERTIFICATES AND REQUIRING NOTICING to be issued in the above-referenced Docket.

(Number of Pages in Order - 12)

ALC/dr

Attachment

cc: Division of Water and Wastewater (Walker, Redemann)

I:961014A.ALC

*See 2*

*UK - Polk*

*mailed - AMZ  
1 - 3/6/98*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificates under grandfather rights to provide water and wastewater service by Crystal River Utilities, Inc. in Polk County.

DOCKET NO. 961014-WS  
ORDER NO. PSC-98-0371-FOF-WS  
ISSUED: March 6, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

ORDER RESCINDING ORDER NO. PSC-97-1048-FOF-WS.  
RESTATING FINDINGS AND CLARIFYING NOTICE REQUIREMENTS

**AND**

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING GRANDFATHER CERTIFICATES,  
AND REQUIRING NOTICING

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action granting certificates and requiring noticing, as 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**

On September 3, 1996, Crystal River Utilities, Inc. (Crystal River or utility) filed an application with this Commission for grandfather certificates to provide water and wastewater service in Polk County, pursuant to Section 367.171, Florida Statutes. The application was filed after the Board of County Commissioners of Polk County adopted a resolution on May 14, 1996, which made the

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utilities in the County subject to the provisions of Chapter 367, Florida Statutes.

Crystal River's application and the circumstances surrounding the transfer were considered at the August 18, 1997 agenda conference. Order No. PSC-97-1048-FOF-WS was issued on September 5, 1997, as a result of action taken at that agenda conference. That Order required Crystal River to notice the customers, the Office of Public Counsel and the Polk County Commission. Crystal River was also required to publish the notice in a newspaper of general circulation in its service area. Crystal River did not notice as directed by the Order due to confusion as to what should be included in the notice. Therefore, because Crystal River did not notice as required by Order No. PSC-97-1048-FOF-WS, we find it appropriate to rescind the Order and to issue a new order. The purpose of this order is to restate our findings and clarify the noticing requirements.

At the time we received jurisdiction in Polk County, the utility, which serves about 84 residential customers, was owned by Rosalie Oaks Utility Corporation (Rosalie Oaks). Although Crystal River entered into an agreement on August 14, 1996, to purchase the system from Rosalie Oaks, closing of the sale was conditioned upon Commission approval. Crystal River has been operating the system since the agreement was signed. To eliminate duplicate filings, Crystal River applied for grandfather certificates in its name. Because Rosalie Oaks entered into a contract to sell the system and turned the system over to Crystal River to operate prior to Commission approval, Rosalie Oaks is in apparent violation of Section 367.071, Florida Statutes.

#### Show Cause

As stated previously, Rosalie Oaks is in apparent violation of Sections 367.071, Florida Statutes, which states, in part, "No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof . . . without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest. Rosalie Oaks and Crystal River entered into agreement for the sale of the system to Crystal River on August 14, 1996. Crystal River has been operating the system providing water and wastewater service to customers of the utility since that time. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, Florida Statutes, 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, Florida

Statutes. 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, F.A.C., 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." Id. at 6.

Rosalie Oaks failed to obtain Commission approval before entering into the contract for sale and turning the system over to Crystal River to operate. Section 14(a) and (b) of the sales agreement, which was signed by Rosalie Oaks and Crystal River in August, 1996, deals with Florida Public Service Commission matters. Section 14(a) states, in part, "Prior to Closing. Purchaser shall submit an application to the Florida Public Service Commission (FPSC) to issue a certificate of authorization . . ." Section 14(b) states, in part, ". . . In the event the FPSC does not approve the application for transfer . . ., the agreement shall be terminated." Although technically, Crystal River did not file an application for transfer prior to entering into this contract and assuming operation of the utility system, from our review of the agreement and conversations with Crystal River, the closing of the sale is contingent upon Commission approval of the sale and issuance of certificates to Crystal River. Failure of Rosalie Oaks to obtain prior approval of the Commission appears to be due to its belief that because the sale had not closed, it was not in violation of Section 367.071, Florida Statutes.

We have reviewed the application and the sales agreement and, although Crystal River has been operating the utility since the agreement was signed in August of 1996, closing of the sale is conditioned upon Commission approval. Therefore, we do not find that the violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Therefore, a show cause proceeding will not be initiated against Rosalie Oaks for failure to obtain Commission approval prior to entering into the sales contract and turning the utility over to Crystal River.

#### Application

On September 3, 1996, Crystal River filed an application for grandfather certificates in Polk County. Except as discussed herein, the application is in compliance with Section 367.171, Florida Statutes, and other pertinent statutes and provision of the Florida Administrative Code. In particular, the application

contains a filing fee in the amount of \$200, as required by Rule 25-30.020, Florida Administrative Code.

The rules and statute do not require noticing for grandfather certificate applications. However, because a sales contract was entered into and Crystal River began operating the system prior to the issuance of the grandfather certificates, we find it appropriate to require Crystal River to notice the customers, the Office of Public Counsel, and the Polk County Commission, by providing them a copy of this Order within seven days of its issuance. We further find it appropriate to require Crystal River to provide notice in a newspaper of general circulation in the utility's service area within seven days of the issuance of this Order. The notice in the newspaper shall state that the Commission granted Crystal River Grandfather Certificates Nos. 594-W and 510-S. The notice in the newspaper shall also include a description of the service area granted, and reference the 21-day protest period. We find that this action is consistent with previous similar Commission decisions. See Order No. 19848, issued August 22, 1988, in Docket No. 880013-WS, Application of Homosassa Utilities, Inc. for water and sewer certificates under grandfather rights, Sumter County, Florida.

Order No. PSC-97-1048-FOF-WS required Crystal River to provide a copy of a warranty deed in the name of utility as proof that it owns the land upon which the utility facilities are located, pursuant to Rule 25-30.035(6), Florida Administrative Code. By letter dated October 24, 1997, a copy of a recorded warranty deed in the name of Crystal River was provided as proof of ownership.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rules 25-30.035(9), (10), and (11), Florida Administrative Code. A description of the territory requested by the applicant is shown on Attachment A of this order, which by reference is incorporated herein. In addition according to the Department of Environmental Protection, there are no outstanding notices of violation against the utility.

The utility is current with regard to regulatory assessment fees and the filing of annual reports through 1996. Crystal River is responsible for paying regulatory assessment fees and filing the annual report for 1997. Pursuant to Rule 25-30.110(3), Florida Administrative Code, "Each utility shall file with the Commission annual reports on forms prescribed by the Commission. The obligation to file an annual report for any year shall apply to any utility which is subject to this Commission's jurisdiction as of December 31 of that year, whether or not the utility has actually applied for or been issued a certificate." Rule 25-30.120(2),

Florida Administrative Code, states, in part, "The obligation to remit the regulatory assessment fees for any year shall apply to any utility which is subject to this Commission's jurisdiction on or before December 31 of that year or for any part of that year . . ." The Rule further states that the "[r]egulatory assessment fees shall be filed with the Commission on or before March 31 for the preceding year ended December 31."

Based on the foregoing, we find it appropriate to grant Crystal River Certificates Nos. 594-W and 510-S to serve the territory described in Attachment A of this order. As stated previously, Crystal River shall send a copy of this order to the Polk County Commission, the Office of Public Counsel, and its customers, within seven days of the date of its issuance. Further, Crystal River shall publish the notice once in a newspaper of general circulation in the utility's service territory within seven days of the issuance date of this order.

**Rates and Charges**

On February 18, 1991, the Polk County Board of County Commissioners approved a resolution establishing water and wastewater rates and charges for Rosalie Oaks. On January 2, 1997, the Commission approved a pass-through rate adjustment to allow the recovery of increased expenses due to payment of regulatory assessment fees. Shown below are the rates requested by Crystal River. These rates include the pass-through adjustment approved by the Commission.

**WATER**  
**Residential Service**  
**(Monthly Rates)**

<b>Base Facility Charge:</b>	<b><u>Amount</u></b>
3/4 X 5/8"	\$ 9.90
1"	\$ 21.31
2"	\$ 68.38
<b>Gallonge Charge: (per 1,000 Gallons)</b>	
0 - 5,000 Gallons	\$ .84
5,001 - 10,000 Gallons	\$ 1.05
Over 10,000 Gallons	\$ 1.26

**WASTEWATER**  
**Residential Service**  
**(Monthly Rates)**

<b>Base Facility Charge:</b>	<b><u>Amount</u></b>
3/4 X 5/8"	\$ 13.30
1"	\$ 23.77
2"	\$101.31
Gallonge Charge - All Flows	\$ 5.71

**Customer Deposits**

	<b><u>Water</u></b>	<b><u>Wastewater</u></b>	<b><u>Total</u></b>
Residential Service	\$25	\$25	\$50

**Meter Test Deposits**

<b><u>Meter Size:</u></b>	<b><u>Charge</u></b>
5/8 x 3/4"	\$ 15.00
1" and 1 1/4"	\$ 20.00
2" and over	\$ 30.00

**Miscellaneous Service Charges**

	<b><u>Charge</u></b>
Initial Connection Fee:	\$ 15.00
Normal Reconnection Fee:	\$ 15.00
Violation Reconnection Fee:	\$ 15.00*
Premises Visit Fee:	\$ 15.00
*\$15.00 or Actual Cost	

Water Installation Fees

<u>Meter Size:</u>	<u>Charge</u>
3/4" x 5/8"	\$200.00
1"	\$200.00
1-1/2"	\$200.00
2"	\$600.00
Over 2"	Actual Cost

Customer Connection (Tap-in) Charge

<u>Meter Size</u>	<u>Water</u>	<u>Wastewater</u>	<u>Total</u>
3/4" x 5/8"	\$ 200.00	\$600.00	\$800.00
1"	\$ 330.00	\$600.00	\$930.00
1-1/2"	\$ 330.00	\$600.00	\$930.00
2"	\$1,000.00	\$600.00	\$1,600.00
Over 2"	Actual Cost	Actual Cost	Actual Cost

We find these rates and charges to be reasonable and they are approved. Crystal River shall charge these rates and charges until authorized to change by this Commission in a subsequent proceeding. Crystal River has filed a tariff which reflects the rates and charges approved herein. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

It is, therefore,

ORDERED by the Florida Public Service Commission that Crystal River Utilities, Inc., Post Office Box 520247, Longwood, Florida 32752, is hereby granted Certificates Nos. 594-W and 510-S to provide service in Polk County. Crystal River Utilities, Inc. is authorized to serve the territory shown on Attachment A of this Order. It is further

ORDERED that Crystal River Utilities, Inc. shall provide a copy of this Order to the Office of Public Counsel and the Polk



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County Commission within seven days of the issuance date of this Order. It is further

ORDERED that Crystal River Utilities, Inc. shall provide a copy of this order to the customers of the utility within seven days of the issuance date of this Order. It is further

ORDERED that Crystal River Utilities, Inc. shall provide notice of the action taken herein once in a newspaper of general circulation in the service territory approved by this Order. The notice shall state that the Commission granted Crystal River Grandfather Certificates Nos. 594-W and 510-S. The notice shall also include a description of the service area granted, and reference the 21-day protest period. Such notice must be published within seven days of the issuance date of this Order. It is further

ORDERED that the rates and charges set forth in the body of this Order are hereby approved. Crystal River Utilities, Inc. shall charge these rates and charges until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED that Crystal River Utilities, Inc. shall pay regulatory assessment fees for 1997 and file an annual report for 1997 in accordance with Rules 25-30.110 and 25-30.120, Florida Administrative Code. 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 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.

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By ORDER of the Florida Public Service Commission this 6th  
day of March, 1998.

**BLANCA S. BAYÓ, Director**  
**Division of Records and Reporting**

By: Kay Flynn  
**Kay Flynn, Chief**  
**Bureau of Records**

( S E A L )

ALC

**NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW**

The Florida Public Service Commission is required by Section 120.569(1), 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.

As identified in the body of this order, our action granting grandfather certificates, requiring proof of land ownership and noticing 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 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 27, 1998. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective on the date 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 the relevant portion of 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 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.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance 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.

CRYSTAL RIVER UTILITIES, INC.  
POLK COUNTY

TERRITORY DESCRIPTION

THE ROSALIE OAKS SUBDIVISION

Commence at the Northeast corner of Section 29, Township 29 South, Range 29 East, Polk County, Florida, and run South along the East boundary of Section 29, 1566.41 feet; thence North  $79^{\circ} 24' 10''$  West, 908.44 feet to the centerline of Camp Mack Road; thence along said centerline, South  $80^{\circ} 09' 10''$  West, 123.40 feet to the beginning of a curve to the left having a central angle of  $08^{\circ} 47' 20''$  and a radius of 2752.18 feet; thence along said curve, for an arc length of 422.17 feet to the end of said curve; thence South  $41^{\circ} 21' 50''$  West, 143.88 feet; thence South  $35^{\circ} 24' 10''$  East, 51.36 feet to the POINT OF BEGINNING for this description; from said POINT OF BEGINNING, continue thence South  $35^{\circ} 24' 10''$  East, 134.10 feet to the beginning of a curve to the left having a central angle of  $90^{\circ} 00' 00''$  and a radius of 20 feet; thence along said curve for an arc length of 31.42 feet to the end of said curve; thence North  $54^{\circ} 35' 50''$  East, 100.00 feet; thence South  $35^{\circ} 24' 10''$  East, 175.00 feet; thence North  $54^{\circ} 35' 50''$  East, 200.00 feet; thence North  $35^{\circ} 24' 10''$  West, 115.00 feet; thence North  $54^{\circ} 35' 50''$  East, 320.95 feet to the beginning of a curve to the right having a central angle of  $46^{\circ} 00' 00''$  and a radius of 205.58 feet; thence along said curve, for an arc length of 165.05 feet, to the end of said curve; thence South  $79^{\circ} 24' 10''$  East, 110.01 feet to the beginning of a curve to the right having a central angle of  $134^{\circ} 00' 00''$  and a radius of 51.98 feet; thence along said curve for an arc length of 121.57 feet to the end of said curve; thence South  $35^{\circ} 24' 10''$  East, 185.00 feet; thence South  $54^{\circ} 35' 50''$  West, 707.86 feet; thence South  $35^{\circ} 24' 10''$  East, 72.74 feet; thence South  $69^{\circ} 24' 10''$  East, 148.94 feet; thence North  $20^{\circ} 35' 50''$  East, 10.00 feet to the beginning of a curve to the right, whose tangent bears South  $69^{\circ} 18' 44''$  East, and has a central angle of  $21^{\circ} 52' 22''$  and a radius of 3180.00 feet; thence along said curve, Southeasterly, for an arc length of 1213.97 feet to the end of said curve, and the beginning of a curve to the left having a central angle of  $22^{\circ} 50' 30''$  and a radius of 260.00 feet; thence along said curve for an arc length of 103.65 feet, to the end of said curve; thence South  $70^{\circ} 16' 52''$  East, 706.24 feet; thence South  $10^{\circ} 16' 52''$  East, 400.69 feet; thence North  $73^{\circ} 24' 00''$  West, 870.32 feet to the beginning of a curve to the right having a central angle of  $25^{\circ} 57' 38''$  and a radius of 655.00 feet; thence along said curve for an arc length of 296.78 feet to the end of said curve, and the beginning of a curve to the left having a central angle of  $21^{\circ} 57' 48''$  and a radius of 2785.00 feet; thence along said curve for an

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arc length of 1067.58 feet to the end of said curve; thence North 69° 24' 10" West, 342.13 feet; thence North 35° 24' 10" West, 538.72 feet; thence North 54° 35' 50" East, 210.00 feet; thence North 35° 24' 10" West, 190.58 feet; thence North 41° 21' 50" East, 102.73 feet to the POINT OF BEGINNING.

**ROSALIE OAKS WATER TREATMENT PLANT**

ALSO, commence at the Northeast corner of Section 29, Township 29 South, Range 29 East, Polk County, Florida, and run South along the East boundary of Section 29, 1566.41 feet; thence North 79° 24' 10" West, 908.44 feet to the centerline of Camp Mack Road; thence along said centerline, South 50° 09' 10" West, 123.40 feet to the beginning of a curve to the left having a central angle of 08° 47' 20" and a radius of 2752.18 feet; thence along said curve, for an arc length of 422.17 feet to the end of said curve; thence South 41° 21' 50" West, 306.72 feet; thence South 53° 24' 20" West, 420.00 feet; thence South 36° 35' 40" East, 50.00 feet to the POINT OF BEGINNING for this description; from said POINT OF BEGINNING, continue thence South 36° 35' 40" East, 208.71 feet; thence South 53° 24' 20" West, 208.71 feet; thence North 35° 35' 40" West, 208.71 feet; thence North 53° 24' 20" East, 208.71 feet to the POINT OF BEGINNING.