BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Application for new classification of service entitled "General Service - Agricultural Labor Camps," "General Service - RV Parks," and "Multi-Residential Service - General" in Collier County by ROOKERY BAY UTILITY COMPANY. | ) DOCKET NO. 900328-SU<br>) ORDER NO. 23380<br>) ISSUED: 8-21-90 | |

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

ORDER GRANTING APPLICATION FOR THREE NEW CLASSES OF SERVICE

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING MODIFICATION OF DEVELOPER AGREEMENTS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein under the section entitled "Modification of Developer Agreements" 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.

## Case Backround

Rookery Bay Utility Company (Rookery Bay or utility) is a Class C wastewater utility operating in Collier County. Most of its customers are residents of master-metered condominiums and

mobile home parks who are billed by their respective associations rather than the utility. Rookery Bay actually bills only 16 customers of record. Water is provided by Collier County Utilities.

The Commission obtained jurisdiction over Rookery Bay on April 16, 1985, at which point all rates and charges were grandfathered in. By this time, the utility had a practice of adopting a new service rate for each developer requesting wastewater service. Thus, the grandfathered rates were customer specific and could not be applied to new developers or customers. Further complicating the picture is the fact that since the company became jurisdictional, it has not had a rate case before the Commission. It had been involved in an overearnings investigation (Docket No. 860554-SU), which resulted in a stipulated rate reduction.

After becoming jurisdictional, the company continued its practice of adopting customer specific rates and this case concerns that practice. The utility signed three seperate developer agreements with three different customers and through the agreements attempted to establish three different rates. By letter, our Staff requested the utility justify the different rates and the nonuniform plant capacity charge, omit certain unnecessary language concerning the consumer price index from future developer agreements, and furnish a service availability policy.

Via letter dated March 29, 1990, the utility announced its intention to refile all three developer agreements in the form of an application for three new classes of service and to file a formal service availability policy. The company filed its application for three new classes of service on April 26, 1990; and it filed a new service availability policy on May 31, 1990. This Order concerns only the new classes of service. The service availability policy will be addressed in Docket No. 900541-SU.

General Service--Agricultural Labor Camps

On October 27, 1989, Rookery Bay filed an application for an amendment to its certificate, Certificate No. 383-S. The amended territory would include approximately 40 acres of territory for the purpose of providing wastewater service to the Six L's Farm, Inc.,

agricultural labor camp. On November 21, 1989, the company filed with the Commission the developer's agreement between it and Six L's Farm. The agreement did not comply with the company's tariff because the rates were customer specific and because no plant capacity charge was assessed. Rookery Bay's certificate was amended to include the additional territory and allow the extension of service to Six L's Farm agricultural labor camp by Order No. 22967, issued May 22, 1990.

The company's new class of service for General Service - Agricultural Labor Camps originally proposed a monthly flat rate of $3.30 per thousand gallons of anticipated peak monthly flows. The company calculated the charge by converting the flat rate it currently charges its other labor camp customer (A. Duda & Sons) to a gallonage charge based on annual wastewater flow characteristics. Use of this gallonage charge establishes a common rate for all agricultural labor camps while allowing the final monthly flat rate to be adjusted to reflect the differences in the wastewater flows from each labor camp.

While the ideal solution would be to convert to a base facility and gallonage charge rate structure, we do not consider it prudent at this time to require the company to file for a full rate case within which to fully restructure its rates without additional justification. We find that the next best alternative is the establishment of this new class of service. The new class of service's general rate can be applied to future labor camp customers, thereby minimizing the resources required to establish service to such new customers. We believe that the continued use of a monthly flat rate produces an accurate and equitable solution at this juncture. The only difficulty with this new class of service filing was that the tariff sheet's language indicated that the billing was based on "peak" flows. However, the $3.30 rate was calculated using average flows; and use of peak flows would produce an inappropriately high bill. On July 12, 1990, the company submitted a revised tariff sheet which states that the billing is based on average flows. Accordingly, we hereby approve the new class of service for General Service - Agricultural Labor Camps.

General Service--RV Parks

On November 3, 1989, the company filed an application for amendment of its certificate for the purpose of serving the

Imperial Wilderness RV Park. By Order No. 23109, issued June 25, 1990, the utility was granted the additional territory. On November 21, 1989, in conjunction with the Six L's Farm developer's agreement, the company submitted its developer's agreement with Imperial Wilderness. This second agreement was, like the first, not in compliance with the company's tariff.

Although this developer's agreement specified a monthly flat rate of $5.00 per unit/pad, the company's new class of service rate for General Service - RV Parks is a monthly flat rate of $4.58 per unit/pad. The company currently provides wastewater service to one other RV Park, Greystone RV Park, which is charged a monthly flat rate of $4.58 per unit/pad. The company compared the wastewater flow characteristics of Greystone and Imperial Wilderness and has determined that a rate of $4.58 per unit/pad is more accurate for RV parks; and that charge, not the $5.00, appears in the filing.

Again, although the ideal solution would be convert to a base facility and gallonage charge rate structure, we are not opposed to the use of a flat rate at this time for the same reasons mentioned in the preceding section of this Order. Accordingly, we hereby approve the new class of service for General Service - RV Parks.

Multi-Residential Service--General

On February 14, 1990, Rookery Bay submitted a third developer's agreement, this one with Rookery Bay, Ltd. - Wentworth Development Corporation. By this agreement, the utility is to provide wastewater service to the Rookery Bay Apartments, a development within the company's certificated territory. The company correctly assessed a plant capacity charge here, but it adopted yet another customer specific rate.

The company began serving the development on May 1, 1990, under this new class of service rate. Since the new class of service was filed on April 26, 1990, the company is in compliance with the new class of service provisions of Section 367.091(4), Florida Statutes.

The proposed new class of service rate is a monthly flat rate of $6.99 per unit/pad. The company currently provides service to nine other condominiums, apartments, and mobile home parks, so it analyzed the wastewater flow characteristics of two other customers

which were most similar to the new development. The utility determined that the monthly flat rate of $6.99 per unit/pad is the most appropriate rate to be assessed to new multi-residential developments.

As with the other new classes of service, we find that the ideal solution of totally altering the company's rate structure is not viable for the reasons stated earlier in the General Service--Agricultural Labor Camps section of this Order. Accordingly, we hereby approve the new class of service for Multi-Residential Service - General.

Furthermore, a controversy has arisen between the company and the developer over the time at which monthly charges should begin for the individual apartments. The original developer's agreement stated that "the sewer (monthly) charge begins with the installation of a home, condominium, mobile home, travel trailer or commercial property regardless of occupancy." The developer contends that he should only have to pay a monthly charge on units which have been deemed occupiable, not on units which are incomplete or non-existent. We find that the company is justified in charging a flat monthly rate to a unit which has been connected for service regardless of occupancy. However, in keeping with the developer's agreement, a unit should not be charged if it has not been "installed." We conclude that the developer should notify the company upon the developer's receipt of each temporary and permanent Certificate of Occupancy issued by Collier County. The company should not begin charging a unit for service until a Certificate of Occupancy has been issued.

Effective Date of New Classes of Service

The tariff rates for the three new classes of service approved herein shall be effective for service rendered on or after Commission staff's approval of the revised tariff sheets.

Refunds

In Order No. 22967, issued May 22, 1990, the rate proposed in the Six L's Farm developer's agreement was approved as an interim measure, subject to refund. The company issued a letter of corporate undertaking in the amount of $15,600 on June 19, 1990.

Six L's Farm is not due a refund since the new class of service rate is slightly higher than the developer agreement rate.

In Order No. 23109, issued June 25, 1990, the rate proposed in the Imperial Wilderness developer's agreement was approved as an interim measure, subject to refund. The company issued a letter of corporate undertaking in the amount of $29,975 on June 28, 1990. On July 9, 1990, the company's attorney notified our Staff that the company had never charged Imperial Wilderness the $5.00 per unit developer's agreement rate. Instead it had been charging $4.42 per unit since service was initiated to the park in October 1989. The company was evidently notified by a consultant that it should assess the same rate to similar customers. Since the company was serving another RV park (Greystone RV Park) for $4.42 per unit, the consultant advised the company to assess the same rate to the Imperial Wilderness RV Park. (Due to a recent index adjustment, the rate is now $4.58 per unit.) The company did not revise the developer's agreement which it submitted on November 21, 1989. Also, the new class of service filing referred to the $5.00 rate. The company submitted a letter dated July 11, 1990, from the manager of Imperial Wilderness which stated that the company had only charged $4.42 since service was initiated. Our Staff called the manager and verified the letter's content. Since the previously charged rate of $4.42 is less than the new class of service rate of $4.58, Imperial Wilderness is not due a refund.

Finally, the company violated Section 367.081(1), Florida Statutes, by charging rates which were not previously approved by this Commission. Also, the company violated Order No. 23109, issued June 25, 1990, by not charging the developer's agreement rate of $5.00 per unit. Although the company could be required to show cause why it should not be fined for these violations, we shall not pursue a show cause action since no harm resulted to the customers. We do, however, place the company on notice that any future violation of this nature will result in a show cause action by this Commission.

Modification of Developer Agreements

The company is hereby required to modify the developer agreements to reflect the correct rates, charges, and policies. That is, the developer agreements shall be modified to reflect the

rates approved herein, to include the correct service availability charge, to omit the unnecessary language regarding the consumer price index, and, in the Wentworth agreement, to require the developer to notify the company upon the developer's receipt of Certificates of Occupancy issued by Collier County. Upon obtaining the appropriate company and developer signatures, the company shall submit the modified agreements to the Commission for review and approval. A filing date of August 15, 1990, is hereby established.

## Service Availability

The company was incorrectly assessing its plant capacity charge. If a development was built-out, the charge was not assessed. Conversely, if a development was not built-out, the charge was assessed. The rationale was that a built-out development would generate immediate revenue, thereby reducing the need for additional revenue through the plant capacity charge.

The company was advised by its consultant, attorney, and this Commission's Staff that this is an incorrect application of a plant capacity charge. The company now understands that is must charge the plant capacity charge to all new customers regardless of the development's state of completion. Additionally, the company has notified the Six L's Farm and Imperial Wilderness developers that its agreements were in error in this respect and that they must be billed for the plant capacity charge.

In consideration of the company's attempt to correct the Six L's Farm and Imperial Wilderness developer's agreements and its correctly assessing the charge to the Rookery Bay Apartments, we shall not order the company to show cause for a violation of its service availability policy in this instance. However, the company is hereby placed on notice that future violations may result in a fine or show cause action.

## Docket Closing

If a protest to the Proposed Agency Action portion of this Order is not received within 21 days of issuance of this Order, the action taken therein shall become final; and docket will be closed upon Commission staff's approval of the tariff sheets.

It is, therefore,

ORDERED by the Florida Public Service Commission that the application by Rookery Bay Utility Company for three new classes of service is granted as set forth in the body of this Order. It is further

ORDERED that the rates approved herein shall become effective for service rendered on or after the stamped approval date on the revised tariff sheets. It is further

ORDERED that the two corporate udertakings entered into by Rookery Bay Utility Company pursuant to Order No. 22967 and Order No. 23109 are hereby discharged, as no refund is necessary for the reasons set forth in the body of this Order. It is further

ORDERED that the company shall modify the developer agreements as set forth in the body of this Order, shall obtain the appropriate signatures, and shall submit the modified agreements by August 15, 1990, for Staff approval. It is further

ORDERED that the action taken in the immediately preceding ORDERED paragraph is issued as proposed agency action and 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 a timely protest is not filed, this docket is hereby closed upon staff's approval of the tariff sheets.

By ORDER of the Florida Public Service Commission this 21st day of AUGUST, 1990.

Steve Tribble

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.

As identified in the body of this order, our action taken under the heading "Modification of Developer Agreements" 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 11, 1990. 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, 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 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 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.

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 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 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.