BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of Certificates Nos. 361-W and 316-S in Citrus County from J & J Water and Sewer Corporation to Meadows Utility Company, Inc.	DOCKET NO. 951026-WS ORDER NO. PSC-98-0043-FOF-WS ISSUED: January 6, 1998

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

APPEARANCES:

Kevin Dixon, Esquire, Brannen, Stillwell & Perrin, Post Office Box 250, Inverness, Florida, 34451-0250
On behalf of J & J Water and Sewer Corporation and Meadows Utility Company, Inc.

Dennis Jones and Brandi Marlene Austin-Jones, 3830 South Pigeon Terrace, Homosassa, Florida, 34448
On behalf of themselves.

Tim Vaccaro, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850
On behalf of the Commission Staff.

FINAL ORDER APPROVING TRANSFER AND DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

BACKGROUND

J & J Water and Sewer Corporation (J & J or utility) is a Class C utility which provides water and wastewater service to approximately 50 residential customers and one church in the Meadows subdivision of Homosassa Springs in Citrus County. According to its last available annual report, the utility had

combined annual revenues of $16,948 and a combined net operating loss of $10,989 in 1993.

By Order No. 11057, issued August 5, 1982, in Docket No. 810482-WS, we granted the utility Certificates Nos. 361-W and 316-S. The utility owner died on August 14, 1994, and the utility passed to the beneficiaries of the John Wilson Trust (Trust). On June 20, 1995, the Trust filed a Notice of Abandonment on behalf of J & J, and this docket was opened. Instead of abandoning the utility, on or about November 15, 1995, the estate of the utility owner sold approximately 91 lots in the Meadows subdivision to Meadows Incorporated. The utility was sold to Meadows Utility Company, Inc. (Meadows) on that date.

On January 17, 1996, Meadows filed an application for transfer of Certificates Nos. 361-W and 316-S from J & J to Meadows. Utility customers raised a question regarding the sufficiency of Meadows' original notice of application. Therefore, our staff recommended to Meadows that it renotice the utility customers, which it did on December 18, 1996. On January 13, 1997, an objection to the application for transfer was timely filed, and this matter was set for an administrative hearing. The prehearing was held on August 29, 1997, and the hearing was held in Crystal River on September 25, 1997. Eleven persons testified at the hearing concerning the service and rates of Meadows Utility company.

Pursuant to Rule 25-22.056(a), Florida Administrative Code, each party shall file a post-hearing statement which shall include a summary of each position. On October 31, 1997, Meadows filed its Post Hearing Statement of Issues and Positions and its Proposed Findings of Fact. We include our ruling on each of Meadows' proposed findings of fact in Attachment A to this Order. On the same date, Dennis and Brandi Jones filed their Post Hearing Statement, which included an objection to Late-Filed Exhibit No. 11. Meadows responded to the Jones' objection on December 3, 1997.

FINDINGS OF FACT, LAW AND POLICY

Having heard the evidence presented at this proceeding and having reviewed the recommendation of the Commission staff, as well

as the post-hearing filings of the parties, we now enter our findings and conclusions.

JONES' OBJECTION TO LATE-FILED EXHIBIT

In their brief, Dennis and Brandi Jones objected to Late-Filed Exhibit No. 11. Staff requested and proffered that exhibit. The exhibit contains invoices which purport to indicate payment by Meadows for utility repairs and expansion.

In their objection, the Joneses argue that the invoices have not been authenticated. The Joneses also cite their inability to conduct cross-examination on the exhibit, which, they allege, would reveal that the invoices do not pertain to utility purposes. In its response, filed December 2, 1997, Meadows states that the invoices are self-explanatory, are supplemental to interrogatories answered under oath by the utility, and should be given the appropriate weight they deserve.

It is longstanding Commission policy that late filed exhibits are subject to objection by parties of record. This is because parties have not had an opportunity to conduct cross-examination so as to determine the reliability and credibility of that evidence. In Order No. PSC-95-1247-FOF-TL, issued October 11, 1995 in Docket No. 940235-TL, titled In Re: Investigation into the Rates of Mobile Service Providers with Facilities of Local Exchange Companies, We sustained McCaw Communications of Florida, Inc.'s (McCaw) Objection to Late-Filed Exhibit No. 29, submitted by Bellsouth Telecommunications, Inc. McCaw's objection cited its inability for cross-examination. We stated that, "[i]n and of itself, the inability to conduct cross-examination is a sufficient basis to deny the admission into evidence of this exhibit." Id. at 6.

Likewise, we find that the Jones' inability to conduct cross-examination on Late-Filed Exhibit No. 11 constitutes a sufficient basis to deny admission of that exhibit. Therefore, we find it appropriate to sustain Dennis and Brandi Jones' objection to Late-Filed Exhibit No. 11. As such, Late-Filed Exhibit No. 11 shall not be admitted into the record in this docket.

OWNERSHIP OR CONTROL OF LAND

Meadows' states in its brief that all water and wastewater facilities were deeded to the utility, with the exception of one lift station. The utility states that ownership of both lift stations is addressed either through a long term lease or through the common elements covering the subdivision, which provides that all common elements are owned subject to their use for water and sewer utilities.

The Joneses state in their brief that Meadows does not know what properties it owns and what properties are owned by others, nor does Meadows understand the recorded documents. The Joneses argue that The Meadows of Citrus County acting as developer never had the right to assert itself as the Homeowners Association via majority ownership of lots in the development, pursuant to the deeds and covenants. Therefore, Meadows of Citrus County had no "right" to lease various utility properties to Meadows Utility Company. Further, the Joneses state that Late Filed Exhibit 9 relating to a second lift station is not valid.

Normally, this issue involves the verification of deeds and/or leases concerning the ownership of land upon which utility treatment facilities are located, pursuant to the rule. In this case, there exists debate concerning the utility's ability to present any deeds or leases because of the original covenants and deed restrictions of the subdivision.

The subdivision at issue was originally developed as a planned residential development under the name of Dexter Park Villas. In his testimony, Witness Dennis Jones included the development's Restrictions and Common Elements, Attachments A and B to the Jones' objection to the transfer. The Restrictions identify the development as one hundred fifty-three single family homes, with certain common elements therein. The Restrictions also state that the restrictive covenants may be modified by the approval of 60% of the members of the Dexter Park Villas Owners Association. The Common Elements state that each lot owner is conveyed an undivided 1/153rd ownership in the common elements, which are described in a legal description attached to the Common Elements.

The Jones' position derives from their assertion that Mr. Lafond, as the developer, does not have 60% ownership of the lots in the subdivision. The Joneses stated in their protest to the transfer that the deeds presented in the case were between the Meadows Corporation, the developer, and Meadows Utility. Therefore, the Joneses assert that these deeds are invalid, because the entity transferring ownership to the utility does not have the ownership or authority to make such a transfer. The Joneses have filed a separate case with the circuit court to affirm their interpretation of the Covenants and Restrictions.

At the hearing, utility Witness Lafond testified that the deeds are valid, because the developer did have a majority ownership in the property. Essentially, the developer, acting as the Homeowners Association, then deeded the lots used for utility business to the utility.

We find that the responsibility for making a legal determination on the issue of interpreting deed covenants and restrictions goes beyond our purview. We addressed this matter at the hearing and explained to the parties that the circuit court had exclusive jurisdiction to resolve interpretations of deed restrictions and how that would affect the property at issue. Until the circuit court issues an order stating that the leases and/or warranty deeds are void, our responsibility is to evaluate only the legality of the leases or warranty deeds as they pertain to Commission rules. Based on the above, we find that it is appropriate to limit our focus to whether the leases or warranty deeds, as filed by Meadows Utility, satisfy the requirements for transfer, as specified by Commission rules.

The utility affirmed that it owns or has continuous right to its existing water and wastewater treatment sites. Witness Lafond testified that Meadows owns all the real property where the water and sewer system is located. The utility provided a warranty deed to the water treatment plant, Egret Park, and the wastewater treatment plant and lots 133 and 134, which are part of the wastewater treatment site. The utility also provided a warranty deed to the Pelican Gulf Park lift station, which had been included as Exhibit K of the utility's application for transfer. Witness Lafond also testified that the utility has a 99-year lease to the

lift station which the utility does not own. The 99-year lease was included as Exhibit PL-3 of Mr. Lafond's testimony.

However, during the Jones' cross-examination of Witness Lafond, it was determined that Exhibit PL-3 of Witness Lafond's direct testimony and Exhibit K of the application had the same legal description for the system's two lift stations. Both exhibits contained the legal description for the Pelican Gulf Park lift station. Witness Lafond testified that he was not an expert in these areas and relied on those who were, in order to meet various Commission regulations. As a result, staff requested a late filed exhibit from the utility, providing a correct legal description for each of the lift stations.

In response to this request, the utility filed Late Filed Exhibit No. 9, is a copy of a 99-year lease with a corrected legal description for the Pelican Gulf Park lift station and the W. Blackbird Lane lift station. It appears that the utility simply modified Exhibit "A" of the lease for the Pelican Gulf Park lift station and added the W. Blackbird Lane right-of-way to the lease. A new lease should have been signed. Therefore, we find that the utility has not demonstrated that it owns or has continued use of the W. Blackbird Lane lift station. At this time, a revised deed or lease specific to the W. Blackbird Lane lift station is still required to complete the requirements of this transfer.

With the exception of the W. Blackbird Lane lift station, we find that Meadows has provided sufficient evidence that it either owns or has a utility lease/easement to the land upon which the water and wastewater facilities are located. The utility has provided documents which fulfill the requirements of Rule 25-30.037(2)(q), Florida Administrative Code, and as discussed earlier, the subject of the Jones' circuit court action is beyond the scope of this proceeding. The utility shall file, consistent with Rule 25-30.037(2)(q), Florida Administrative Code, evidence that the utility owns the land upon which the W. Blackbird Lane lift station is located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. We may consider a written easement or other cost-effective alternative. The information shall be filed within 60 days of our vote in this matter.

FINANCIAL ABILITY

Meadows states in its brief that the acquisition of the facilities by Meadows in November of 1995, resulted in Meadows inheriting severe problems with the facility. Meadows asserts that the applicant and its principals have demonstrated their financial ability to operate and improve the facility. Further, Meadows states that it has identified and corrected most of the deficiencies it inherited. Also, Meadows states in its brief that the utility has expended a significant amount of funds in engineering work for the anticipated expansion of the facilities to serve the entire territory.

Mr. and Mrs. Jones' state in their brief that "the evidence adduced in this case shows that the Meadows Utility Company, Inc. has relied upon funds from other businesses to pay its bills. The utility has had other corporations acquire services to its operations due to its own failure to provide the financial capability." Mr. and Mrs. Jones objected to Late-Filed Exhibit 11, and discussed their concerns with the information presented by the utility in that exhibit. As discussed earlier in this Order, we have deemed Late-Filed Exhibit No. 11 inadmissable.

Meadows sponsored Witness Paul Lafond regarding Meadows' financial ability. Neither Mr. and Mrs. Jones nor staff sponsored any witnesses on this issue. Also, no other witnesses provided testimony regarding the applicant's financial ability.

Meadows Witness Lafond stated in his prefiled direct testimony that his personal net worth at the time of the hearing was over two million dollars, and provided a copy of his personal financial statement as support for his testimony. According to his personal financial statement, Mr. Lafond's net worth was $2,309,800 as of December 20, 1995. The majority of Mr. Lafond's assets are in the form of real estate, mortgages and contracts owned. According to the financial statement and Mr. Lafond's testimony at the hearing, as of December 20, 1995, he held approximately $65,000 in savings and checking accounts.

Witness Lafond also testified that Meadows had spent $30,000 to keep the water and wastewater company operating. Meadows provided a breakdown of those expenditures which indicates that

slightly over half of that amount was spent on utility repairs such as repairing leaks, installing new meters, cleaning sewer lines, and repairing lift station pumps. The remainder of those expenditures were for attorney's fees associated with this transfer application.

Additionally, Witness Lafond provided testimony regarding the buyer's expenditures for the utility's proposed wastewater treatment plant expansion. Staff witness Phyllis James, an employee of the Department of Environmental Protection (DEP), testified that the utility's wastewater treatment plant is not in compliance with its permits, because its flows exceed the permitted design capacity of the plant. Witness James' prefiled direct testimony included a letter dated February 21, 1997, which indicated that the utility's operating permit will expire on March 10, 1998 and will not be reissued due to the excessive flows.

Witness Lafond testified that the utility can be brought into compliance with DEP by repairing a sewer line that is allowing water intrusion. He testified that the repair will cost approximately $15,000 to $20,000. Further, Witness Lafond indicated in a response to staff interrogatories that the utility intends to expand the wastewater treatment plant, which would both provide capacity for future development of the subdivision and correct the problem with the excessive flows.

Witness Lafond testified that Meadows had invested over $60,000 for the design of the new wastewater system, and to bring the water system up to date. As support for that testimony, Meadows submitted a copy of the blueprints of the new wastewater system produced by the engineering firm of Berryman & Henigar.

According to the utility's application for transfer, the proposed wastewater treatment plant expansion will cost approximately $215,000. Witness Lafond testified that Meadows intends to finance the plant expansion through the Bank of Inverness. He further testified that the utility has a verbal commitment from Mr. Wayne Oswald with the Bank of Inverness. However, the utility has not received a written commitment due to the pending lawsuit with Mr. and Mrs. Jones. Witness Lafond testified that the bank would not loan any money for the plant expansion until the lawsuit is settled.

Consequently, the utility cannot obtain financial backing for the expansion at this time. As discussed earlier, Witness Lafond testified that the problem with the excessive wastewater flows can be corrected through a line repair. Witness Lafond testified that it is Meadow's intention to pay out of pocket to repair the sewer line allowing water intrusion. He further testified that the utility will make this repair as soon as possible, if the transfer is approved.

In their brief, Mr. and Mrs. Jones state that the evidence in this case shows that Meadows has relied upon funds from other businesses to pay its bills. Also, the Joneses state that the utility has relied upon other corporations to acquire services for its operations due to Meadows' lack of financial capability. However, we find no evidence in the record that indicates that Meadows has either relied upon other businesses for funds, or that other businesses have performed utility functions for Meadows.

Based on the above, we find that Meadows has the necessary financial ability to provide service to the utility's authorized service territory.

TECHNICAL ABILITY

Utility Witness Lafond testified that Meadows has contracted with certified operators pursuant to Florida Administrative Code. Further, staff Witnesses James and Sequeira testified that the utility has obtained and maintained all DEP permits for both the water and wastewater facilities. Witness Lafond testified that utility facilities were in a state of disrepair when the Meadows took over operations. Witness Lafond and staff Witness James testified that Meadows has identified and corrected most of the deficiencies it inherited. In addition, the utility has contracted engineering work for the anticipated expansion of the facilities to serve the entire territory.

In their brief, Mr. and Mrs. Jones state that the utility does not have the technical ability, because the record demonstrates that the utility has not complied with other governmental agency requirements. The Joneses referenced the testimony of staff Witness James from DEP to support their position. The Joneses also referred to the customer testimony of Mr. Green, which indicated

that there was no one to contact in case of any emergency when the owners were away.

We have addressed the issue of technical ability by focusing upon three areas. The first addresses the water system, the second addresses the wastewater system and the third addresses other rule compliance.

Water

Staff Witness Sequeira provided testimony on Meadows' technical ability to operate and maintain the water treatment plant. Witness Sequeira testified that the utility has certified operators and has maintained the required chlorine residual. Witness Sequeira testified that the overall maintenance is satisfactory, and the facilities have not been subject to any DEP enforcement action within the last two years.

Wastewater

Staff Witness James provided testimony on Meadows' technical ability to operate and maintain the wastewater treatment plant (WWTP). Witness James testified that the utility had certified operators and a current operating permit for its WWTP with a capacity limit of 10,000 gallons per day (GPD). The permit is valid until September 30, 1999. Witness James also testified that Meadows' wastewater collection facilities were adequate to serve existing customers, and that the treatment and disposal facilities were located in accordance with DEP rules at the time the facilities were constructed.

Although the utility had current permits, the evidence indicates it was experiencing some problems in its wastewater treatment plant with respect to flows. Witness James testified that she sent letters to the utility, marked as Exhibits PJ-1, 2 and 3, identifying areas for correction concerning the treatment plant capacity and also percolation rates of the existing percolation ponds. However, in spite of this, Witness James testified that the utility had not been subject to any DEP enforcement action with regard to wastewater treatment plant within the past two years.

During cross examination by both the utility and Mr. Jones, Witness James testified that an inspection of the utility was conducted around the time that Meadows began its operations of the J & J facility in November of 1995, but she could not state with certainty whether the plant was operating above capacity at that time. She did respond that she understood from other later inspections that the plant was operating above its capacity, and in fact, had never operated below capacity.

The utility questioned the witness with respect to improvements made by the utility to correct the excessive wastewater flow. Witness James testified that she was aware that the utility had taken steps to identify the deficiencies, but hadn't taken steps to correct them. However, she agreed that the utility had been taking steps to correct and identify problems with other issues concerning the wastewater facility.

The Jones' position appears to derive mainly from a response that Witness James gave on cross-examination by Mr. Jones. She testified that she had not received documents requested from the utility with regard to flow calibration on the elapsed time meters on the lift station.

Witness Lafond supplemented Witness James' testimony with respect to utility improvements. He testified that the Florida Rural Water Association found major infiltration in the wastewater pipes due to the use of inner tubes used to put pipes together. He testified that the utility was working with Ms. James to get the plant under capacity and intended to fix the lines. He estimated that it would cost about $15,000 to $20,000 to repair the line. In response to staff cross-examination, Witness Lafond testified that the electrical control boxes were totally waterproof and kept locked with a padlock. Further, he testified that one percolation pond had already been dried out, then scraped, old sludge removed and rototilled, and that this process was being done to the second pond. Witness Lafond testified that completion of these items would bring the plant into compliance with DEP.

With respect to plant expansion, Witness Lafond testified that the utility intends to expand the sewer plant. Plans for the water and wastewater expansions have been prepared by the engineering firm of Berryman & Henigar. However, Witness Lafond testified that

with the current law suit pending, the bank will not loan any money for the proposed expansion. However, as we discussed earlier in this Order, the utility does have the financial ability to continue the utility's current operational level.

Other Rule Compliance

The testimony of utility customer Green during the evening portion of the hearing, brought to light two particular areas which we find deserve attention. Witness Green testified that approximately six months ago, he experienced a water break that resulted in a 30-foot geyser shooting up onto his property. He called the phone number he was instructed to call and was told that he could not be helped, because "they were out of town hunting." He then attempted to turn the water off via the company's shut off valve on the meter, but he and another 240-pound man with a crescent wrench could not turn off the valve. Witness Green testified that the incident showed that the system is not being correctly maintained.

Based upon this testimony, it appears that the utility has violated three rules. Rule 25-30.330(1), Florida Administrative Code, states, "Each utility shall provide its customers with the following information on at least an annual basis: (a) telephone numbers regular and after hours." Evidently, the utility has provided an after hours phone number; however, it does not appear that it is connected to an appropriate receiver who can take action on true emergency calls.

The purpose of this rule is to provide a means for communicating emergencies so the utility can respond. The communications technology available today can allow automatic call forwarding or many other options to insure that emergency calls are received by the utility or its designated responder, at a low cost to the utility. We find that the utility's response to Witness Green is not acceptable.

Rule 25-30.260(3), Florida Administrative Code, states, "Each utility shall install an accessible service control valve on the inlet side of each meter." Rule 25-30.225(5), Florida Administrative Code, states, "Each water utility shall operate and maintain in safe, efficient, and proper condition, all of its

facilities and equipment used to distribute, regulate, measure or deliver service up to and including the point of delivery into the piping owned by the customer." We understand that the condition of the utility facilities was primarily an inherited situation. However, the customer testimony clearly shows that there is a system deficiency that requires a review and correction by the utility.

Summary on Technical Ability

We find that the testimony of Witness Sequeira concerning the water treatment and distribution system clearly shows that the system is in compliance with DEP. There was no evidence presented to the contrary by the Joneses.

With respect to the wastewater system, we find that the record indicates an ongoing effort by Meadows to bring the system into compliance with DEP, and particularly the treatment plant flow situation and effluent disposal. This is indicated by Witness James' testimony concerning the corrections made by the utility, and also the information provided by Witness Lafond on the types of problems the utility had and what was being done to correct these areas. We do not find evidence to conclude that the utility has repeatedly neglected to comply with DEP information requests, as stated in the Jones' brief. Further, it appears that the noncompliance concerning wastewater treatment arose prior to ownership of the facilities by Meadows. Based on the above, we find that the utility has demonstrated the basic technical ability to operate, maintain and expand water and wastewater facilities to serve the territory.

However, although the issue of technical ability usually relates to complying with DEP standards, in this case the record also contains information about the utility's ability to comply with Commission rules with respect to the technical provision of service. Based on earlier discussion, we find it appropriate for the utility to implement a contingency plan should an emergency occur - such as authorizing the contract operator to make a repair in case of emergency - in compliance with Rule 25-30.331(1), Florida Administrative Code. Therefore, Meadows shall file a report within 30 days of the date of our vote on this matter

explaining how it has modified its operations to comply with the rule regarding emergency phone numbers.

Further, pursuant to Rule 25-30.225(5), Florida Administrative Code, we find it appropriate for the utility to implement a survey of shut-off valves in its territory, which shall be conducted on the side of the utility (inlet side). The survey shall identify locations which require installation of a valve, locations where the valve is broken or permanently stuck. The utility shall then install or replace shut-off valves in accordance with the following schedule until all valves are installed or repaired: One to 10 valves within 60 days after the issuance of this Commission's Order; 11 to 20 valves within 90 days after the issuance of this Commission's Order; 21 to 30 valves within 120 days after the issuance of this Commission's Order; and 31 to 40 valves within 180 days after the issuance of this Commission's Order. The utility shall file a report on this survey and replacement process 10 days after each time frame indicated above.

FULFILLMENT OF UTILITY COMMITMENTS, OBLIGATIONS AND REPRESENTATIONS

This issue is a part of the requirements contained in Rule 25-30.037(2)(j), Florida Administrative Code, which provides that the applicant must supply a statement of its intent to fulfill the commitments, obligations and representations of the seller with regard to utility matters. Although not generally identified as a separate issue in transfer cases, we believe that enough controversy existed concerning Mr. Lafond's operations with respect to the utility for us to include this particular portion of the transfer rules as an issue.

The Jones' posthearing position focuses on improvement of services by Mr. Lafond, although this is not supported by any additional information in their brief. In their brief, the Joneses argue that since the developer had donated facilities, the commitments and obligations of the developer were not being fulfilled by Mr. Lafond. This is further explained in Witness Dennis Jones' testimony, where he states that the developer, Mr. Wilson, donated all the utility's water and sewer equipment to the subdivision and, therefore, Mildred Wilson, as successor trustee, had no right to sell, give, bargain, or trade any part of it. It

appears that Witness Jones' position is that Mr. Lafond could not fulfill obligations, because Mr. Lafond obtained the system "illegally" from Mildred Wilson, in that she allegedly had no right to sell any of the utility because it had already been donated by Mr. Wilson to the subdivision.

The concept of donating portions of a system relates to the establishment of rate base for a utility, and ultimately to the development of monthly rates and those charges applied when connecting individuals for service, commonly known as service availability charges. The word "donate" is a regulatory term of art that means that the utility did not make the investment in that particular portion of the system. Rather, and most commonly, another entity, such as a developer, built the lines and/or plant, and then "donated" it to the utility. The receipt of property, services or money donated to a utility is called contributions-in-aid-of-construction, or CIAC. Rule 25-30.515(3), Florida Administrative Code, defines CIAC as, "any amount or item of money, services, or property received by a utility, from any person or governmental agency, any portion of which is provided at no cost to the utility, which represents an addition or transfer to the capital of the utility, and which is utilized to offset the acquisition, improvement, or construction costs of the utility's property, facilities, or equipment used to provide utility services to the public. The term includes, but is not limited to, system capacity charges, main extension charges and customer connection charges." Rule 25-30.515(4), Florida Administrative Code, defines "contributor" as a person, builder, developer or other entity who makes a contribution-in-aid-of-construction. The effect of collecting CIAC by a utility is that it acts as an offset to the investment made by the utility, and, therefore, lowers the overall dollar value of rate base.

Tariff sheet Original 21.0, referred to by Witness Dennis Jones in his testimony, states the following, "The utility's water transmission and distribution system and sewage collection system was donated by the developer of the subdivision." This means that the water distribution lines and the sewer collection lines were installed by the developer and then transferred or donated to the utility owner. The utility owner would then record the value of the lines as an offset to the value of the other utility plant installed by the utility. Since the subdivision was established by

a developer, this essentially amounted to taking value from one pocket and moving it to another. However, in no way did it ever mean that the utility did not have ownership of its lines, as suggested by Witness Jones. In fact, the original service and management agreement for the park stated that the owner, as developer, agreed to provide maintenance of water and sewer distribution lines. This is consistent with the concept that the utility/developer still owned the lines and was therefore responsible for their maintenance. This language was also included in the sale agreement referred to in Exhibit DJ-25.

The utility states in its brief that it has maintained and improved service since its purchase, and once the certificates are transferred, will expand the facilities. Witness Lafond, on cross-examination, acknowledged that the utility got off to a rocky start due to misunderstandings and misinterpretations of the utility's responsibility. However, Witness Lafond testified that the utility has attempted to comply with the requirements of Commission rules and its tariff, and has been without incident in that regard since January, 1997. These actions include correcting and taking action on plant deficiencies, correcting past incorrect billings of monthly service rates and miscellaneous service charges through refunds.

Further evidence indicates that the utility has made efforts and investments in attempting to address issues from DEP. Witness Lafond also testified that the utility pursued various expansion plans, but was unable to invest in these until the issue of granting a certificate had been finalized.

Based on the record, Meadows has made progress in coming to terms with the various responsibilities and requirements of owning and operating a utility regulated by this Commission, consistent with the language of the rule. Therefore, we find that Meadows has demonstrated the ability to fulfill the commitments, obligations and representations of the seller with regard to basic utility matters, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code. However, we have concerns about the professionalism of utility operations. The testimony of the Joneses and some of the customers indicates that the role of developer and the role of utility operator have often been confused by Mr. Lafond, largely to the detriment of the parties, in the role of utility customer.

Such actions are unprofessional, at best, and certainly not in either the utility's or its customers' best interest. Therefore, Meadows is hereby placed on notice that a clear separation between the developer and the utility should be made by Mr. Lafond in both his informal and formal business interactions. Customer interactions relating to utility operations should focus only on utility business.

OTHER SOURCES OF SERVICE IN GEOGRAPHIC PROXIMITY

The purpose of this issue is to determine whether another source of water and wastewater service exists within geographic proximity to the utility, which could replace the existing source of service. Meadows states in its brief that there are no other sources of service within geographic proximity to the utility. Mr. and Mrs. Jones state in their brief that the County exists as a source of service in the event the utility is abandoned.

Neither Meadows nor Mr. and Mrs. Jones sponsored any witnesses on this issue. Staff sponsored one witness, Mr. Louis Badami, to address the short and long-term ramifications of denying the transfer of the utility's certificate to Meadows.

Staff Witness Badami is employed by Citrus County as the Director of Public Utilities. Witness Badami testified that Citrus County has no desire to take over the utility facilities. Additionally, he reviewed correspondence within the County's files that dated as far back as 1991, which indicated that the County did not want to operate the facility, but would look at it if the County's water and wastewater lines were extended at some point in the future.

However, Witness Badami also testified that Citrus County does not have plans to expand its central systems into the vicinity of J & J for at least five years. The County attempted in 1992 and 1997 to gain voter support for a utility sales tax referendum that would have enabled the County to expand its water and wastewater systems; however, both attempts failed. The County's nearest water main is 4.2 miles away, and the nearest wastewater force main is 5.2 miles away. According to Witness Badami's testimony, connecting the utility's water and wastewater systems to the

County's water and wastewater systems would cost at least $378,000 and $480,200, respectively.

Witness Badami further testified that the County would take over operation of the utility's existing facilities as a receiver if DEP requested it do so through a civil action. However, under this scenario the County would only operate the existing facilities, not interconnect them. Witness Badami testified that acting as receiver would create a financial hardship on the County.

In consideration of the $858,200 cost to connect the utility's lines to the County's facilities, and the County's plans not to extend its lines into the utility's service area for at least five years, we do not find that the County is a feasible source of service for the customers of this utility at this time. Further, no testimony was provided to identify any other sources of water and wastewater service within geographic proximity to the utility. Based on the above, we find that service does not exist from other sources within geographic proximity to the utility.

OTHER UTILITY OWNERSHIP OPTIONS

The utility has taken the position in its prehearing statement and in its brief, that there are no other possible ownership options for the utility, other than the applicant. Mr. and Mrs. Jones state in their brief that another ownership option exists through the customers of the system.

Staff sponsored Witness Bonnie Turaniczo in a effort to discern whether there was any possibility that the family of the developer would have any interest in retaking ownership of the system.

Witness Turaniczo is the daughter of the late developer of the Meadows Subdivision, Mr. John W. Wilson, and served as an officer of J & J. Witness Turaniczo testified in her prefiled direct testimony that her stepmother, sister, and she continued to operate the utility for about a year following the death of her father.

Witness Turaniczo further testified that since the subdivision was only partially developed, the utility was not generating sufficient income to maintain the system in an operating capacity

and to expand the system as needed in accord with its state regulatory permit. Consequently, the utility's legal representative notified Citrus County of the possibility of abandonment in approximately June of 1995. However, prior to Citrus County becoming receiver for the system, Mrs. Turaniczo and her family made arrangements to sell the utility facilities to Mr. Paul Lafond, and, therefore, the utility was not abandoned.

Witness Turaniczo also testified that in the event the Commission does not approve the transfer of the utility certificates from J & J to Meadows, her family will not take any action to ensure the continued operation of the utility. She stated that her step-mother and her sister's husband are in very poor health. The family does not have the time, the finances nor the energy to run this utility. Further, the utility corporation has been dissolved, and the family does not believe it has any further legal responsibility for operating the utility systems.

Additional ownership options were explored during the hearing. During cross examination, Witness Brandi Jones testified that her husband had attempted to form an association several years ago around 1989 or 1990. She also testified that she had petitioned the circuit court to mandate the formation of a homeowners association to act in the position of the developer. This was in conjunction with the Jones' protest over Mr. Lafond having the ownership interest required by the covenants and deed restrictions to act as the developer for the subdivision. The circuit court case was unresolved at the time of the hearing.

During the customer testimony portion of the hearing, Witness Thomas F. Kennedy testified that he would be interested in purchasing and operating the utility if it becomes available. Witness Kennedy owned a house served by Meadows which he rented, and his tenants had complained about high water bills. He testified that he and his two sons are master plumbers. They are licensed in the state of Florida to build a utility water distribution system and also a wastewater system. He further testified that if he owned the system, he would check with Citrus County to see what it charged for service, and would probably charge the same or less.

The final ownership option explored regarded the acquisition of the system by the County. However, as discussed earlier in this Order, staff Witness Badami stated that the County was not interested in acquiring this system. He testified that the County did not have the staff to do the daily operations or inspections, and would probably have to raise the rates of the system. In response to cross examination by Mr. Jones, Witness Badami testified that the County could not acquire it at that time.

The record clearly indicates that the family of the prior owner of the utility have no interest in resuming these responsibilities. The status of the case in circuit court regarding Mr. Lafond's ability to assume the status of developer in the subdivision based on lot ownership, and whether the formation of a homeowners association could be mandated to act in the position of developer, is still pending. Although Witness Kennedy expressed interest in ownership of the utility, no contract to that effect was presented as evidence in the hearing. Finally, the County has indicated that it is unable to and is not interested in acquiring the system. Therefore, we find that at this time, no other ownership options exist other than the applicant.

PUBLIC INTEREST

In its brief, the utility incorporated its facts from the previous issues addressed in this Order and added that Meadows had been fulfilling the obligations of the previous owners since November of 1995. We have found no evidence to support the availability of service from other sources or by other owners. Therefore, the system will be forced into an abandonment posture, if we do not approve the transfer. This would not be in the public interest for the customers of the utility.

In this case, public interest carries particular significance, because of the controversy over the various actions taken by Mr. Lafond toward the utility customers, and questions raised by the Joneses concerning Mr. Lafond's overall character. The Jones' position on this issue reiterates this concept. They also argue that the utility has charged its customers for services rendered by other businesses, which have been inflated by invoicing from businesses over which the principles have control. However, is no specific record support for this statement. The Joneses also state

that the principles will slander and seek public defamation against a customer if a complaint is filed. Again, the Joneses cited no specific evidence.

We find that acrimony does exist between Mr. Lafond, acting as a developer in the utility business, and the Joneses and other residents of the subdivision. As discussed earlier in this Order, it appears that Mr. Lafond has had difficulty in the past with separating the two functions of developer and utility owner, and, as a result, has used the utility business to obtain compliance with homeowner business, and vice versa. Mr. Lafond also appears to exercise a management style that is not detail oriented, as evidenced by the apparent confusion over information in the application package, correct deed information and the correct application of tariffed charges. In addition, he has taken actions with residents that have been characterized as threatening.

In the alternative, the record also shows that when Mr. Lafond acquired the utility system, it was in need of various repairs and upgrades, which he has already done. Further, he has extended himself to other experts in obtaining information about what other improvements are necessary, and has discussed his funding alternatives with a bank. Other service options for the utility's customers do not exist at this time. Also, since January of 1997, utility operations have been without incident.

We must rely on the evidence and consider the utility customers' overall best interests in coming to a decision regarding public interest. Mr. Lafond has demonstrated his willingness to operate the utility and his commitment to the utility, through the fact that he has been operating it since November of 1995 and has made various investments and improvements in the system. Certainly, abandonment of the system resulting in higher rates from the County is not a reasonable option. The customers may be consoled in some measure by recognizing that this Commission is available to contact to resolve future utility related disputes as well as the fact that it performs various monitoring activities to ensure compliance with rules and regulations.

Based on the above, we find it in the public interest to grant Certificates Nos. 361-W and 316-S from J & J Water and Sewer Company to Meadows Utility Company, Inc. The approved territory is

appended to this Order as Attachment B. Meadows Utility Company, Inc. shall charge the rates and charges approved in Order No. PSC-96-1474-FOF-WS until modified by this Commission.

SHOW CAUSE

This docket was originally filed as a notice of abandonment by J & J. Staff Witness Turaniczo testified that her father, John L. Wilson, established J & J. Mr. Wilson died on August 14, 1994, leaving staff Witness Turaniczo, along with her stepmother and sister (the family), to operate J & J. Staff Witness Turaniczo testified that the family's attorney notified Citrus County of a possible abandonment of the utility system. However, prior to J & J's abandonment, the family sold the utility system to Meadows, which subsequently filed its application for transfer.

Section 367.071(1), Florida Statutes, provides, in part, that no utility shall sell, assign, or transfer its certificate of authorization, facilities, or any portion thereof, without approval of the Commission. The family sold J & J to Meadows without obtaining our approval.

Section 367.161(1), Florida Statutes, authorizes us 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. The utility's failure to obtain Commission approval prior to its sale to Meadows appears to be a willful violation of Section 367.071(1), Florida Statutes.

In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled 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., this Commission, having found that the utility 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

In its brief, the utility argues that J & J should not be ordered to show cause, stating that the "alleged violation . . .

was not willful and was beyond the controls of the principals." Mr. and Mrs. Jones did not address this issue in their brief.

Although J & J's action appears to be willful in the sense intended by Section 367.161(1), Florida Statutes, we do not find that J & J's violation of Section 367.071(1), Florida Statutes, rises to the level of warranting that a show cause order be issued. Staff Witness Turaniczo testified that after Mr. Wilson's death, the family attempted to continue utility operations. However, the Meadows subdivision was only partially developed, and the utility was not generating sufficient income to maintain the utility system in an operating capacity and to expand the system as required by its DEP permit. The family could have abandoned the utility, but as staff Witness Turaniczo testified, "the family undertook a good faith effort to salvage the subdivision development and the utility corporation by a sale to a third party."

From the evidence, it appears that the family sold the utility to Meadows, believing that it was in the best interest of the utility and the Meadows subdivision. Therefore, J & J shall not be ordered to show cause, in writing within 20 days, why it should not be fined for violation of Section 367.071, Florida Statutes.

CLOSING OF DOCKET

This docket shall be closed administratively upon the timely receipt of proof of ownership of the land upon which the W. Blackbird Lane lift station is located, and upon expiration of the time for filing an appeal. If a party files a notice of appeal, this docket shall be closed administratively upon resolution thereof by the appellate court.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of Certificates Nos. 361-W and 316-S from J & J Water And Sewer Corporation to Meadows Utility Company, Inc. is hereby approved. It is further

ORDERED that each of the findings made in the body of this Order is hereby approved in every respect. It is further

ORDERED that all matters contained in the attachments appended to this Order are by reference incorporated herein. It is further

ORDERED that Meadows Utility Company, Inc. shall file with this Commission a properly executed warranty deed conveying title of the W. Blackbird Lane lift station site to Meadows Utility Company, inc., or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease, within sixty (60) days of the date of the Commission's vote on this matter. It is further

ORDERED that Meadows Utility Company, Inc. shall file a report within 30 days of the date of the Commission's vote in this matter, explaining how the utility has modified its operations to comply with Rule 25-30.330(1), Florida Administrative Code, regarding emergency phone numbers. It is further

ORDERED that Meadows Utility Company, Inc. shall implement a survey of shut-off valves, make the necessary installations or repairs and file all associated reports as set forth in the body of this Order. It is further

ORDERED that Meadows Utility Company, Inc. shall continue charging the rates and charges which were approved in Order No. PSC-96-1474-FOF-WS, until modified by this Commission. It is further

ORDERED that a show cause proceeding shall not be initiated against J & J Water and Sewer Corporation for violation of Section 367.071, Florida Statutes. It is further

ORDERED that this docket shall be closed administratively upon the timely receipt of proof of ownership of the land upon which the W. Blackbird Lane lift station is located, and upon expiration of the time for filing an appeal. If a party files a notice of appeal, this docket shall be closed administratively upon resolution thereof by the appellate court.

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

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

TV

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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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.

ATTACHMENT A

PROPOSED FINDINGS OF FACT

Pursuant to Rule 25-22.056(2), Florida Administrative Code, Proposed Findings of Fact shall be succinct, shall clearly cite to the record and shall not contain mixed questions of law and fact. We have reviewed Meadows Utility Company, Inc.'s Proposed Findings of Fact and rule on them as follows:

1. The Meadows Utility Company, Inc. owns the land upon which the water and sewer facilities are located and has provision for the continual use of the land upon which the lift stations are located. (TR 66-70, 209, 224-225, 233; Exhibit No. 9)

   RULING: Accept with the exception that Meadow's continued use of the land upon which the W. Blackbird Lane lift station is located, is not supported by the greater weight of the competent and substantial evidence.

2. The Meadows Utility Company, Inc. has demonstrated the financial ability to provide water and wastewater service to the territory previously granted J & J Water and Sewer Corporation. (TR 72 and exhibits referenced therein; Exh 10, 11)

   RULING: Accept, excluding any reliance on Exhibit 11.

3. The Meadows Utility Company, Inc. has demonstrated the technical ability to operate, maintain and expand water and wastewater facilities to serve the territory previously granted J & J Water and Sewer Corporation. (TR 15, 16, 20, 21, 32-33, 44, 50, 51, 71, 211, 212, 215, 218, 223, 228-229, and exhibits referenced therein; Exh 12)

   RULING: Accept.

4. The Meadows Utility Company, Inc. has demonstrated the ability to fulfill the commitments, obligations and representations of J & J Water and Sewer Corporation with regard to utility matters. (TR 15, 16, 20, 21, 23, 32-33,

44, 50, 51, 71, 72-73, 121, 122, 167, 211, 212, 215, 218, 223, 228-229; Exh 10, 11 and 12)

RULING: Accept, excluding any reliance on Exhibit 11.

5. No service exists from other sources within geographic proximity to the utility and there are no other possible ownership options for the utility system other than the Meadows Utility Company, Inc. (TR 9, 10, 26 and 46)

RULING: Accept.

6. It is in the public interest for the Commission to grant the transfer of Certificates No. 316-W [sic] and 316-S from J & J Water and Sewer Corporation to Meadows Utility Company, Inc. (TR 10, 15, 16, 20, 21, 32-33, 44, 46, 49, 50, 51, 52, 53, 59, 60, 70, 71, 228-229, 289-290, 314 and 315.

RULING: Accept.

7. J & J Water and Sewer Corporation's alleged violation of Section 367.071 Fla. Stat. was not willful and was beyond the control of the principals. (TR 8-9)

RULING: Reject as a mixed question of fact and law, in violation of Rule 25.22.056(2)(b), Florida Administrative Code.

ATTACHMENT B

MEADOWS UTILITY COMPANY, INC.

CITRUS COUNTY

WATER AND WASTEWATER SERVICE AREA

Township 19 South, Range 17 East

Section 24

Dexter Park Villas, an unrecorded subdivision in the West 1/2 of the Southwest 1/4 of the Southwest 1/4 of the Southeast 1/4 and the Southeast 1/4 of the Southwest 1/4 except the West 1/2 of the Southwest 1/4 of the Southeast 1/4 of the Southwest 1/4.