

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 6, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Redemann)
Office of the General Counsel (Jaeger)

RE: Docket No. 060165-WS – Application for amendment of Certificates 455-W and 389-S to extend water and wastewater service areas in Flagler and Volusia Counties and request for approval of special service availability agreements by Plantation Bay Utility Co.
Counties: Flagler and Volusia

AGENDA: 07/18/06 – Regular Agenda – Proposed Agency Action Issue 2 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Arriaga

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: This recommendation should immediately follow the recommendation in 050281-WS

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060165.RCM.DOC

Case Background

Plantation Bay Utility Company (Plantation Bay or utility) is a Class B water and wastewater utility located in Flagler and Volusia Counties. Plantation Bay provides service to approximately 1,473 water and wastewater customers in Volusia and Flagler Counties. Plantation Bay is located in the St. Johns River Water Management District which is considered a priority water resource caution area. In 2005, the utility had annual operating revenues of

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\$410,196 for water and \$252,677 for wastewater, with a net operating income of \$63,591 for water and a net operating loss of \$97,118 for wastewater.

On February 27, 2006, the utility filed an application for an amendment to Certificate Nos. 455-W and 389-S in Flagler and Volusia Counties, Florida, pursuant to Rule 25-30.036(3), Florida Administrative Code. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve the application to amend Certificate Nos. 455-W and 389-S in Flagler County by Plantation Bay Utility Co.?

Recommendation: Yes, the Commission should approve Plantation Bay Utility Co.'s amendment application to add the Reserve at Flagler and Dixie Commons. The proposed territory is described in Attachment A. The utility should charge the customers in the territory added herein the monthly service rates contained in its current tariff until authorized to change by the Commission. (Redemann)

Staff Analysis: On February 27, 2006, Plantation Bay Utility Co. filed an amendment application to include additional territory in Flagler County, pursuant to Rule 25-30.036(3), Florida Administrative Code. The application complies with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. Adequate service territory and system maps and a territory description have been provided. A description of the territory requested to be added by the utility is appended to this recommendation as Attachment A.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the notice were received and the time for filing such has expired. The local planning agency was provided notice of the application and did not file a protest to the amendment. The Department of Community Affairs has identified no growth management concerns with the proposed expansion of the utility. The utility states that the provision of service will be consistent with the utility section of the local comprehensive plan. The utility plans to serve a commercial area with office space that will serve about 56 ERCs and 75 single-family homes in the proposed area. The utility has provided a copy of a title insurance policy which provides for the continued use of the land as required by Rule 25-30.036(3)(d), Florida Administrative Code.

With respect to technical ability, the utility has engaged Wetherall Treatment Systems and provided a listing of their licensed operators and license numbers. The application states there are no outstanding Consent Orders or Notices of Violation from the Florida Department of Environmental Protection (FDEP). However, in Docket 050281-WS, a file and suspend rate proceeding, FDEP identified some water and wastewater quality of service issues. By a Proposed Agency Action Order issued in that docket, the Commission ordered quarterly progress reports to the Commission and the Office of Public Counsel; however, that Order has been protested and a settlement has been filed.¹

Regarding the financial impact of the proposed amendment, the utility has entered into two developer agreements which are discussed in Issue 2. The financial information filed with the application shows that Plantation Bay has the financial ability to serve the requested area.

¹ Order No. PSC- PSC-06-0170-PAA-WS, issued March 1, 2006, in Docket No. 050281-WS, In Re: Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

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Based on the above information, staff recommends that the Commission should approve Plantation Bay Utility Co.'s amendment application to add the Reserve at Flagler and Dixie Commons. The proposed territory is described in Attachment A. The utility should charge the customers in the territory added herein the monthly service rates contained in its current tariff until authorized to change by the Commission.

Issue 2: Should the special developer agreements be approved?

Recommendation: Yes. The special developer agreements with The 84 Acres Limited Partnership and the Lighthouse Development Group, Inc. should be approved. In the event a timely protest is filed by a substantially affected person, the charge should remain in effect and any increased charges collected should be held subject to refund pending resolution of the protest. (Redemann)

Staff Analysis: The utility's amendment application included special developer agreements with The 84 Acres Limited Partnership and the Lighthouse Development Group, Inc. Pursuant to Rule 25-30.515(18), Florida Administrative Code, a Special Service Availability Contract is an agreement for charges for the extension of service which is not provided for in the utility's service availability policy. In addition, pursuant to Rule 25-30.550(2), Florida Administrative Code, each special service availability contract shall be approved by the Commission prior to becoming effective.

The utility proposes to require the developers to construct and donate the on-site and off-site facilities of the water distribution and wastewater collection systems to the utility. In addition, the utility requested \$3,075 per equivalent residential connection (ERC) in connection charges. These connection charges only apply to the developments of The Reserve at Flagler and Dixie Commons that are located outside the utility's service area.

Special developer agreements are negotiated contracts which compensate the utility for extending service to areas where the alternative is for the developer to install a smaller, less efficient independent system or install wells and septic tanks. Since these are negotiated settlements covering areas currently outside the utility's territory, they may not comport with the utility's existing tariffed charges. The utility currently has a water system capacity charge of \$635.88 plus a meter installation charge of \$100 for a total charge of \$735.88. The wastewater system capacity charge is \$530.72. The total water and wastewater system capacity charge with a meter is \$1,266.60/ERC. The system capacity charge is designed to recover the customers' share of the cost of the existing treatment plant and lines. By Order No. PSC-06-0170A-PAA-WS, in Docket No. 050281-WS, the Commission discontinued the utility's service availability charges and required collection of donated lines beginning in 2006. As mentioned previously, the Order has been protested and settlement negotiations are underway.

The utility estimates that the next phase of water treatment plant improvements will cost approximately \$3,965,000, and will serve about 2,000 ERC's for a total of \$1,249/ERC. The next phase of wastewater treatment plant improvements will cost approximately \$3,136,000, and will serve about 2,000 ERC's for a total of \$1,826/ERC (see Attachment B). These costs were based on a report by Quentin L. Hampton Associates, Inc. Pending the negotiations of the rate case settlement, it is unclear how this will affect the level of CIAC. Because these customers are outside the utility's certificated area, the utility states that it would not be willing to serve the new customers unless they paid their fair share of the new water and wastewater facilities.

Pursuant to Rule 25-30.550(3), Florida Administrative Code, each special service availability contract and developer's agreement shall be accompanied by a statement from the utility affirming the current treatment plant connected load, the current treatment plant capacity,

and the amount of capacity reserved under the contract. This information shows that the utility has the capacity to serve these customers.

Staff recognizes that these developer agreements are negotiated transactions. If the special service availability agreements are not approved, and the utility declines to amend its service territory, the developers might have to provide their own water and wastewater service by building small water and wastewater plants, or installing individual wells and septic tanks, which are not the best environmental option.

Based on the above, staff believes that the special developer agreements with The 84 Acres Limited Partnership and the Lighthouse Development Group, Inc. should be approved. In the event a timely protest is filed by a substantially affected person, the charge should remain in effect and any increased charges collected should be held subject to refund pending resolution of the protest.

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Issue 3: Should this docket be closed?

Recommendation: Yes, if no protest to the approved special developer agreements is filed by a substantially affected person within 21 days of the issuance of this Order, the docket should be closed upon issuance of a Consummating Order. (Jaeger)

Staff Analysis: If no protest to the approved special developer agreements is filed by a substantially affected person within 21 days of the issuance of this Order, the docket should be closed upon issuance of a Consummating Order. If a protest is filed, the docket should remain open pending resolution of the protest.

PLANTATION BAY UTILITY CO.
WATER AND WASTEATER SERVICE AREA
IN FLAGLER COUNTY

The Reserve at Flagler:

Township 13 South, Range 31 East, Flagler County, Florida

All of Lots 1, 2, 12 and part of Lot 11, Block "B" and all of Lots 5, 6, 7 and part of Lots 4, 8, and 9, Block "A", in Section 3, Township 13 South, Range 31 East, Bunnell Development Company Subdivision of record in Plat Book 1, Page 1, Public Records of Flagler County, Florida, more particularly described as follows:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 3, THENCE NORTH 89°02'02" EAST ALONG THE NORTH LINE OF SAID SECTION 3, A DISTANCE OF 1995.92 FEET TO THE NORTHWEST CORNER OF LOT 2 OF SAID BLOCK "B" AND THE POINT OF BEGINNING; THENCE SOUTH 01°51'39" EAST ALONG THE WEST LINES OF LOTS 2, 12 AND 11 OF SAID BLOCK "B", A DISTANCE OF 2426.62 FEET TO A POINT IN THE EASTERLY LINE OF A 100 FOOT FLORIDA POWER AND LIGHT EASEMENT; THENCE SOUTH 17°05'43" EAST ALONG SAID EASTERLY LINE A DISTANCE OF 227.06 FEET TO A POINT IN THE NORTH LINE OF OLD DIXIE HIGHWAY, A 66 FOOT RIGHT OF WAY IN THIS AREA (8-5-04); THENCE NORTH 89°25'11" EAST ALONG SAID NORTH LINE A DISTANCE OF 1189.89 FEET TO A POINT IN THE WESTERLY LINE OF STRICKLAND CANAL AS NOW LAID OUT AND USED; THENCE NORTH 06°25'36" WEST ALONG SAID WESTERLY LINE A DISTANCE OF 2666.58 FEET TO A POINT IN THE NORTH LINE OF SAID SECTION 3 AND IN THE NORTH LINE OF SAID BLOCK "A", THENCE SOUTH 89°30'36" WEST ALONG SAID NORTH LINE A DISTANCE OF 968.67 FEET TO THE NORTHWEST CORNER OF SAID BLOCK "A", SAID POINT BEING ALSO THE NORTH ONE-QUARTER CORNER OF SECTION 3; THENCE SOUTH 89°02'02" WEST ALONG THE NORTH LINE OF SAID SECTION 3 AND ALONG THE NORTH LINE OF SAID LOT 2, BLOCK "B", A DISTANCE OF 665.31 FEET TO THE POINT OF BEGINNING, CONTAINING 87.459 ACRES MORE OR LESS.

Dixie Commons, Parcels 1 and 2:

Township 13 South, Range 31 East, Flagler County, Florida

A PORTION OF LOTS 9, 10, 11 AND 12, BLOCK "A", SECTION 3, TOWNSHIP 13 SOUTH, RANGE 31 EAST, BUNNELL DEVELOPMENT COMPANY SUBDIVISION AS PER MAP OR PLAT OF RECORD IN PLAT BOOK 1, PAGE 1 PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: AS A POINT OF REFERENCE, COMMENCE AT THE NORTHEAST CORNER

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OF SAID SECTION 3; THENCE S05°04'03"E ALONG THE EASTERLY LINE OF SAID SECTION 3 FOR A DISTANCE OF 2,685.39 FEET

TO THE CENTERLINE OF OLD DIXIE HIGHWAY; THENCE DEPARTING SAID EASTERLY LINE S89°23'27"W ALONG SAID CENTERLINE FOR A DISTANCE OF 1,390.77 FEET; THENCE DEPARTING SAID CENTERLINE N00°36'33"W FOR A DISTANCE OF 33.00 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SAID OLD DIXIE HIGHWAY (A VARIABLE WIDTH RIGHT-OF-WAY) AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE S89°23'27"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE FOR A DISTANCE OF 199.60 FEET; THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY LINE N00°38'47"W FOR A DISTANCE OF 199.52 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 55.04 FEET, A RADIUS OF 52.56 FEET, A CENTRAL ANGLE OF 60°00'00", A CHORD BEARING OF N29°21'13"E AND A CHORD DISTANCE OF 52.56 FEET TO A POINT OF TANGENCY; THENCE N59°21'13"E FOR A DISTANCE OF 118.90 FEET; THENCE N59°23'27"E FOR DISTANCE OF 346.47 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 117.89 FEET, A RADIUS OF 112.58 FEET, A CENTRAL ANGLE OF 60°00'00", A CHORD BEARING OF N29°28'26"E AND A CHORD DISTANCE OF 112.58 FEET TO A POINT OF TANGENCY; THENCE N00°36'33"W FOR A DISTANCE OF 324.38 FEET; THENCE N89°23'26"E FOR A DISTANCE OF 573.05 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE 95 OFF RAMP (A LIMITED ACCESS RIGHT-OF-WAY); THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES; (1) THENCE S16°19'04"E FOR A DISTANCE OF 71.22 FEET TO A POINT OF CURVATURE; (2) THENCE ALONG A CURVE TO THE RIGHT, HAVING AN ARC LENGTH OF 1106.98 FEET, A RADIUS OF 600.00 FEET, A CENTRAL ANGLE OF 105°42'30", A CHORD BEARING OF S36°32'12"W AND A CHORD DISTANCE OF 956.52 FEET TO A POINT OF TANGENCY; (3) THENCE S89°23'27"W FOR A DISTANCE OF 300.00 FEET; (4) THENCE S00°36'33"E FOR A DISTANCE OF 69.00 FEET TO THE AFOREMENTIONED POINT OF BEGINNING.

CONTAINING 591003.45 SQUARE FEET OR 13.568 ACRES, MORE OR LESS.

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Attachment B