

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of C.S.M.) DOCKET NO. 951243-WU
Enterprises, Inc. For a) ORDER NO. PSC-96-0598-FOF-WU
Certificate to Provide Water) ISSUED: May 7, 1996
Service in Columbia County.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER GRANTING CERTIFICATE AND REQUIRING
C.S.M. ENTERPRISES, INC. TO FILE A 1995 ANNUAL REPORT
AND PAY REGULATORY ASSESSMENT FEES FOR 1995

AND

NOTICE OF PROPOSED AGENCY ACTION
ORDER SETTING RATES AND CHARGES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is final except for setting rates and charges which 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 October 18, 1995, Quail Heights Country Club (Quail Heights) filed an application with this Commission for a certificate to provide water service in Columbia County. Quail Heights is owned by C.S.M. Enterprises, Inc. (CSM). The utility has been in existence providing service and charging rates since 1978. The utility serves 40 residential lots in Fairway Villas. CSM purchased the utility from Mr. J. R. Tyson, who established the community in 1973 and operated it under the name of Quail Heights Golf, Inc.

DOCUMENT NUMBER-DATE

05103 MAY-7 86

FPSC-RECORDS/REPORTING

The application, as filed, contained several deficiencies. During a review of the application, it was determined that Quail Heights is not registered with the Secretary of State's office as a fictitious name. Upon being notified that the name would have to be registered before a certificate could be issued, CSM requested that its name appear on the certificate instead of Quail Heights. CSM filed revised tariff sheets reflecting the change in name on March 29, 1996. Since the remainder of the deficiencies have been corrected, the official filing date for the application is March 29, 1996.

The utility's facilities consist of one water treatment plant and one water transmission and distribution system. Water for the water treatment plant is provided from a well located on the property. CSM is awaiting a consumptive use permit for a replacement or backup well. Wastewater is provided by septic tanks.

CSM also has three non-potable wells used to irrigate the golf course. All costs for provision of the non-potable water are recovered as operating expenses.

CSM became aware of the need for a certificate to provide water service when it sought a permit from the Department of Environmental Protection (DEP) to drill a backup or replacement well. Upon being advised by DEP of this Commission's regulation, CSM immediately filed an application for a certificate. However, because CSM has been providing service since 1978 without a certificate or order finding it exemption from Commission regulation, it is in apparent violation of Section 367.031, Florida Statutes.

Show Cause

As stated in the case background, CSM is in apparent violation of Section 367.031, Florida Statutes, which states, in part, "Each utility subject to the jurisdiction of the commission must obtain . . . a certificate of authorization to provide water or wastewater service or an order recognizing that the system is exempt from regulation as provided by s. 367.022" CSM has been providing water service to the residents of Fairways Villa since June of 1978 without a certificate or order finding it exempt from Commission regulation. CSM's 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, 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., 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.

Failure of CSM to obtain a certificate or order finding it exempt from Commission regulation prior to providing service appears to be due to lack of knowledge of the statutes and Commission's rules. CSM first became aware of this Commission's regulation and of the necessity to obtain a certificate or exemption from the Commission when it sought a permit from DEP to drill a backup or replacement well.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we find that the violation of Section 367.031, Florida Statutes, in these circumstances does not rise to the level which warrants initiation of a show cause proceeding. Therefore, a show cause proceeding shall not be initiated.

Application

Except as discussed previously, the application is in compliance with Section 367.045, Florida Statutes, and other pertinent Statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$750.00, pursuant to Rule 25-030.020(2)(a), Florida Administrative Code. CSM also provided a warranty deed as evidence that it owns the land upon which its facilities are located, in accordance with Rule 25-30.034(1)(e), Florida Administrative Code.

Adequate territory and system maps have been provided, as required by Rule 25-30.034(1)(h), (i), and (j), Florida Administrative Code. A description of the territory CSM has requested to service is shown on Attachment A of this Order, which by reference is incorporated herein.

CSM provided proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code, including notice to the customers in the proposed territory. No objections to the application has been received and the time for filing such has expired.

Since CSM has been in operation under our jurisdiction since 1978, and has been providing satisfactory service to its customers, we believe that the Utility has demonstrated its ability to provide service to the requested territory. CSM has contracted with Mr. Leonard Withey, Jr. to operate and maintain the system. Mr. Withey has been a licensed water plant operator since 1972 and holds License No. 1386. In addition, from the information filed with the application, it appears that CSM has the financial ability to serve the requested area.

Therefore, we find that it is in the public interest to grant Certificate No. 581-W to CSM to serve the territory described in Attachment A of this Order.

Rates and Charges

CSM currently charges a flat rate of \$15.00 per month per lot for all services (residential, multi-family and general). The rate, which was established by the former owner, has never been changed.

Rule 25-30.255(1), Florida Administrative Code, requires each utility to measure water sold on the basis of metered volume sales unless the Commission approves a flat rate service arrangement for the utility. In order to design an appropriate rate, rate base must be established for the utility. Since rate base has never been established for CSM, we find it appropriate to approve the existing \$15.00 flat rate for all services until rate base has been established. When rate base is established, usage rates will be calculated and service availability charges will be set by the Commission. CSM is also put on notice that it must install meters on or before the implementation of usage rates.

CSM's service availability policy is set forth below.

The only service provided by the company is potable water. This water is being provided by wells that are maintained by the company. Water is available to all designated lots and can be connected prior to construction of buildings on the lots. The cost of the service is \$15.00 per month per lot. The company does not charge any advance payments presently and does not plan to do so in the future. All inspections will be done by the company at their expense. There is no contributed property. All easements and right-of-ways belong to CSM, Inc.

Rule 25-30.580(1), Florida Administrative Code, states that the minimum amount of contributions-in-aid-of-construction (CIAC) should not be less than the percentage of facilities and plant represented by the water transmission and distribution system. However, Rule 25-30.580(2), Florida Administrative Code, also provides for the Commission to exempt a utility from the guidelines of subsection (1) when it introduces unreasonable difficulty. Since the utility's books and plant have not yet been audited by the Commission, we cannot determine if any CIAC exists and the appropriate level. Therefore, we find it appropriate to exempt CSM from the guidelines in Rule 25-30.580(1), Florida Administrative Code, until a staff-assisted rate case is conducted.

Currently, CSM does not charge miscellaneous service charges. However, since certain services are necessary and since costs are incurred to provide these services, we find it appropriate to require CSM to charge the following miscellaneous service charges:

<u>Type of Service</u>	<u>Charge</u>
Initial Connection	\$15.00
Normal Reconnection	\$15.00
Violation Reconnection	\$15.00
Premises Visit	\$10.00

CSM does not collect customer deposits and none are approved herein.

CSM has filed a water tariff reflecting 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.

Annual Report and Regulatory Assessment Fees

Pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code, annual reports and regulatory assessment fees are due from regulated utilities regardless of whether a certificate has been granted. CSM has been subject to this Commission's jurisdiction since 1978. Therefore, we find it appropriate to require CSM to file a 1995 annual report and remit regulatory assessment fees for 1995. CSM shall file the annual report and pay the regulatory assessment fees within 45 days of the date of this Order.

It is, therefore,

ORDERED by the Florida Public Service Commission that C.S.M. Enterprises, Inc., Route 18, Box 707, Lake City, Florida 32025, is hereby granted Certificate No. 581-W to provide water service in the territory described on Attachment A of this Order. It is further

ORDERED that C.S.M. Enterprises, Inc.'s \$15.00 flat rate for all services is hereby approved. C.S.M. Enterprises, Inc. shall charge these rates and charges until rate base is established by the Commission in a subsequent proceeding. At that time usage rates will be calculated and service availability charges will be determined. It is further

ORDERED that C.S.M. Enterprises, Inc. is put on notice that it must install meters on or before the implementation of usage rates. It is further

ORDERED that C.S.M. Enterprises, Inc. shall charge the miscellaneous service charges set forth in the body of this order. It is further

ORDERED that C.S.M. Enterprises, Inc. is exempt from the provisions of Rule 25-30.580(1), Florida Administrative Code, until such time as a staff-assisted rate case is conducted. It is further

ORDERED that the tariff filed by C.S.M. Enterprises, Inc. shall be effective for service rendered or connections made or after the stamped approval date on the tariff sheets. It is further

ORDERED that C.S.M. Enterprises, Inc. shall file a 1995 annual report and pay regulatory assessment fees for 1995 within 45 days of the date of this Order. 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.

By ORDER of the Florida Public Service Commission, this 7th
day of May, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay DeLeon
Chief, Bureau of Records

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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 setting rates and charges 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 May 28, 1996. 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.

ATTACHMENT A

CSM ENTERPRISES, INC.

TERRITORY DESCRIPTION

The following described lands located in portions of Sections 1, 11 and 12, Township 4 South, Range 16 East, Columbia County, Florida:

Section 1: Begin at the Southwest corner of Section 1, thence North 02° 58' 37" West to the southeasterly right-of-way of State Road 247 for a distance of 2266.56 feet, thence North 40° 33' 35" East along the southeasterly right-of-way of State Road 247 for a distance of 597.12 feet, thence North 87° 56' 48" East for a distance of 907.90 feet, thence South 01° 42' 22" East for a distance of 178.70 feet, thence North 47° 51' 52" East for a distance of 1344.06 feet, thence South 49° 01' 44" East for a distance of 105.00 feet, thence North 49° 01' 44" West for a distance of 105.00 feet, thence North 48° 24' 49" East for a distance of 237.97 feet, thence South 02° 02' 12" East for a distance of 1119.49 feet, thence South 02° 12' 47" West for a distance of 184.38 feet, thence South 02° 13' 05" West for a distance of 300.02 feet, thence North 89° 02' 47" East for a distance of 35.93 feet, thence South 02° 02' 12" East for a distance of 1620.59 feet, thence South 86° 51' 31" West for a distance of 1300.11 feet, thence South 02° 30' 24" East for a distance of 334.72 feet, thence North 86° 42' 12" East to the point of beginning for a distance of 1297.37 feet.

Section 11: The Northeast 1/4 of the Northeast 1/4 as lies North and East of Interstate 75 (State Road 93); and

Section 12: The Northwest 1/4 of the Northwest 1/4.