

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for grandfather certificate to operate water utility in Okeechobee County by Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club.

DOCKET NO. 040889-WU
ORDER NO. PSC-06-0595-PAA-WU
ISSUED: July 7, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

FINAL ORDER GRANTING CERTIFICATE AND APPROVING EXISTING RATES AND CHARGES AND NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING SERVICE AVAILABILITY POLICY, PLANT CAPACITY CHARGE, AND MISCELLANEOUS SERVICE CHARGES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding the service availability policy, the plant capacity charge, and the miscellaneous service charges, 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 May 13, 2004, the Okeechobee County Board of County Commissioners (County Commission) adopted Resolution No. 2004-16 declaring the water and wastewater utilities in that County subject to the provisions of Chapter 367, Florida Statutes. We acknowledged the resolution on June 15, 2004.¹ Pursuant to Section 367.171(2)(b), Florida Statutes, each utility engaged in the operation or construction of a system is entitled to receive a certificate for the area served on the day the Chapter becomes applicable to it.

On August 18, 2004, Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club (Blue Heron or utility) filed an application for a grandfather water certificate pursuant to Section 367.171(2)(b), Florida Statutes. The application was found to be deficient. By letter dated October 14, 2004, the utility requested an extension of time to complete deficiencies based on the possible transfer of the facilities to the Okeechobee Utility Authority.

¹ Order No. PSC-04-0593-FOF-WS, in Docket No. 040469-WS, In Re: Resolution of the Board of County Commissioners of Okeechobee County declaring Okeechobee County subject to the provision of Chapter 367, F.S.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

When those and subsequent negotiations failed, the utility completed the filing requirements on June 14, 2005. At that time, the utility was still attempting to assemble the books and records necessary to file its 2004 annual report and provide staff with sufficient supporting documentation to perform a desk audit of rates and charges. The utility's 2004 annual report was late-filed on November 22, 2005, and supporting documentation was satisfied on May 2, 2006.

According to the application, the utility facilities were established in 1991 to serve 266 platted lots in the community known as the Blue Heron Golf & Country Club in Okeechobee County. The utility facilities were subsequently transferred three times prior to the Commission obtaining jurisdiction with Messrs. McBrayer and Stevens becoming the owners in August of 2003. Currently, water service is being provided to approximately 90 lots. Wastewater service is provided by individual septic systems. The utility is located in a portion of the South Florida Water Management District (SFWMD) which is considered a critical water supply problem area.

This order addresses the application for a grandfather water certificate and rates and charges. We have jurisdiction pursuant to Sections 367.171 and 367.045, Florida Statutes.

Grandfather Certificate

The utility's application for a grandfather certificate is in compliance with the governing statute and administrative rules. Pursuant to Rule 25-30.030(9), Florida Administrative Code, noticing does not apply to applications for grandfather certificates. The application contains a legal description of the Blue Heron Golf & Country Club community as well as system and territory maps. A description of the territory is attached hereto as Attachment A. The application also contains a recorded warranty deed in the names of Donald E. McBrayer and Marty and Lois Stevens as proof of ownership of the land upon which the treatment facilities are located. The owners are a partnership registered with Florida Department of State, Division of Corporations, to do business as Blue Heron Golf & Country Club.

The water system consists of two wells along with treatment and storage facilities. The permitted capacity is 250,000 gallons of water per day with treatment by aeration, filtration, amoniation, and chlorination. When first contacted by our staff in August of 2004, the Florida Department of Environmental Protection (DEP) was in the process of issuing a second Notice of Non-compliance for failure of the utility to test its back-up generator under load, to repair the aerator screens, and to install new media in the carbon filters. According to subsequent statements by the utility, and confirmed with DEP, the utility tested its generator, although not under load, and an electrician had been contracted to modify the wiring so the generator could operate the plant automatically. DEP has informed us that it intends to conduct follow-up inspections on the non-compliance issues and will issue any necessary warning letters giving a time-frame for corrective action.

We have verified that the utility is current on annual reports and regulatory assessment fees through 2005. We also explained to the utility the need to maintain its books and records according to the National Association of Regulatory Utility Commissioners (NARUC) uniform system of accounts (USOA) as well as the need to keep utility books and records separate from

non-utility books and records. Within 30 days from the date of the consummating order in this docket, the utility shall provide a statement that it has established its books and records in compliance with the NARUC USOA, including the ability to provide separate general ledgers for utility and non-utility records.

Based upon the above, Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club's application for a grandfather certificate is hereby approved. The utility shall be issued Certificate No. 629-W, effective May 13, 2004, to serve the territory described in Attachment A.

Rates and Charges

Okeechobee County did not exert jurisdiction over the rates and charges of privately-owned water and wastewater utilities within the County. According to the application, the rates and charges that were in effect when Blue Heron acquired the facilities in August of 2003 were adjusted by Blue Heron effective March 1, 2004, just prior to Okeechobee County turning over jurisdiction to the Commission.

Blue Heron's existing monthly service rates consist of a base facility charge (BFC) of \$31.18 which includes the first 3,000 gallons of water. Usage over 3,000 gallons is billed at the rate of \$4.08 per thousand gallons. Because the service rates were not authorized by Okeechobee County and appeared high, our staff performed a desk audit to determine whether the rates were reasonable. The utility was unable to provide documentation for the original cost of the facilities other than a statement from the original owner that total construction cost for plant and lines was approximately \$500,000. Apparently, all original source documentation was either lost or destroyed by the prior owners and the engineering firm which had constructed the facilities is no longer in existence.

The utility provided us with a statement of revenues and expenses for 2005, along with supporting documentation for its 2005 operating expenses. The information provided shows that operating expenses exceed total revenues. The utility, which is over 15 years old, has been incurring costs for on-going maintenance as well as costs to upgrade to DEP's new compliance standards for trihalomethanes and haloacetic acids. In addition, the utility contracts for most of its operating and maintenance services. Those contract costs are higher than average due to the utility's relatively remote location. Finally, since the utility is only at approximately one-third build out, its operating costs are spread over a small customer base. Based on supporting documentation, the utility's operating expenses appear reasonable for the utility's size and location as well as the age and type of its treatment facilities. In consideration of all these factors, we find that the utility's existing monthly service rates are reasonable and shall be continued.

Meter Installation. The utility has an existing meter installation charge of \$150 which is reasonable and is hereby approved. In addition to residential lots which are metered and billed, the utility provides potable water service to a clubhouse and pool but does not bill them. According to the utility, the clubhouse is currently being used for an office but the pool is closed.

Within 30 days from the issuance of the consummating order, the utility shall install a water meter at the clubhouse and begin billing for usage at its existing rates. Within 15 days after the meter installation, the utility shall provide verification of the installation. When service to the pool is reinstated, the utility shall install a water meter at the pool and bill for usage at its existing rates.

The utility owns a golf course which is currently closed. According to the utility, the golf course is irrigated by unmetered, non-potable water drawn from ponds. We confirmed with SFWMD that Blue Heron has a permit for the use of pond water to irrigate the golf course. Since the golf course is not currently receiving service from the utility, we find that an irrigation rate shall not be established at this time. However, if the golf course requests potable water service from the utility, the utility shall install a potable water meter at the golf course and begin billing for usage at its existing rates. If the golf course requests irrigation water from the utility, Blue Heron is on notice that it must file for a new class of service for irrigation water pursuant to Section 367.091(5) and (6), Florida Statutes.

Service availability policy and plant capacity charge

The utility's service availability policy is to construct its own facilities and recover the cost of lines and plant through a system capacity charge of \$1,250. The current owners do not have original cost documentation for the utility facilities other than a statement from the original owner that the facilities cost \$500,000 to construct. In addition, the current owners do not have documentation showing the amount of contributions-in-aid-of construction (CIAC) collected by the prior owners. Finally, the current owners were not able to provide cost justification or information regarding how the utility's existing service availability charges were determined and Okeechobee County did not exert jurisdiction over the rates and charges of privately-owned water and wastewater utilities within the County.

Pursuant to Rule 25-30.570, Florida Administrative Code, if the amount of CIAC has not been recorded on the utility's books and the utility does not submit competent substantial evidence as to the amount of CIAC, the amount of CIAC shall be imputed to be the amount of plant cost attributable to the transmission and distribution system. The utility estimates that approximately 50% of the estimated original construction costs of \$500,000 represents the cost of the lines. We believe that an assignment of 50% of the original cost to lines is reasonable. Since the property was initially developer-owned, staff believes it is also reasonable to assume that the lines were donated. Therefore, we find that the estimated \$250,000 for the lines be considered 100% contributed, pursuant to Rule 25-30.570, Florida Administrative Code.

Pursuant to Rule 25-30.580, Florida Administrative Code, the maximum amount of CIAC should not exceed 75% of the total original cost of the utility's facilities and plant at design capacity. It appears that, if the estimated cost of the lines is imputed as CIAC, the existing system capacity charge would result in a contribution level in excess of 90% at design capacity. We estimate that a plant capacity of \$400 per equivalent residential connection (ERC) would result in a contribution level of approximately 75% at design capacity. Therefore, we find that a

plant capacity charge of \$400 per ERC shall be approved for all new connections and that the utility's service availability policy shall be adjusted accordingly.

Based on the above, we find that the service availability policy and plant capacity charge are hereby approved. The charge is shown on attached Schedule No. 1, attached hereto. The utility shall charge its approved plant capacity charge until authorized to change it by this Commission in a subsequent proceeding. Within 10 days from the issuance of the consummating order in this docket, the utility shall provide notice of its approved plant capacity charge. Within 10 days after the notice is given, the utility shall file a copy of the notice along with a statement attesting to the date the notice was given. Within 30 days from the issuance of the consummating order in this docket, the utility shall provide a revised tariff reflecting its approved service availability policy and plant capacity charge. Pursuant to Rule 25-30.475(1), Florida Administrative Code, the effective date of the tariffs shall be the stamped approval date.

Miscellaneous service charges

The application also requested miscellaneous service charges consistent with Rule 25-30.460, Florida Administrative Code, which defines four categories of miscellaneous service charges as shown on Schedule No. 1, attached hereto. In addition, the utility has requested a \$5.00 late payment charge which is consistent with recent Commission decisions,² which have determined that \$5.00 represents the cost to process late payments.

We find that the utility's proposed miscellaneous service and late payment charges are appropriate and are hereby approved. Within 10 days from the issuance of the consummating order in this docket, the utility shall provide notice of its approved miscellaneous service charges. Within 10 days after the notice is given, the utility shall file a copy of the notice along with a statement attesting to the date the notice was given. The utility has provided a proposed water tariff which reflects these rates and charges. Pursuant to Rule 25-30.475(1), Florida Administrative Code, the effective date of the tariff shall be the stamped approval date.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club's application for a grandfather water certificate is hereby approved effective May 13, 2004. It is further

ORDERED that Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club shall be issued Certificate No. 629-W to serve the territory described in Attachment A. It is further

ORDERED that all attachments appended hereto are incorporated herein by reference. It is further

² Order No. PSC-06-0331-PAA-WS, issued April 24, 2006, in Docket No. 050902-WS, In Re: Application to transfer assets and Certificate Nos. 590-W and 508-S in Polk County from Lake Haven Utility Associates, Ltd. d/b/a Lake Wales Utility Company to Gold Coast Utility Corp.

ORDERED that within 30 days from the date of the Consummating Order, Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club shall provide a statement that it has established its books and records in compliance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts. It is further

ORDERED that the existing rates and charges and meter installation charge shall be continued by Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club until authorized to change by this Commission in a subsequent proceeding. The effective date of the tariff shall be the stamped approval date. It is further

ORDERED that within 30 days from the date of the Consummating Order, Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club shall install a water meter at the clubhouse and begin billing for usage at its existing rates. It is further

ORDERED that within 15 days after the meter installation at the clubhouse, Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club shall provide verification of the installation. It is further

ORDERED that Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club shall install a water meter at the pool and bill for usage at its existing rates when service to the pool is reinstated. It is further

ORDERED that Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club shall install a potable water meter at the golf course and bill for usage at its existing rates if service is requested by the golf course. It is further

ORDERED that Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club shall file for a new class of service for irrigation water if the golf course requests irrigation water from the utility. It is further

ORDERED that Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club's service availability policy and plant capacity charge are approved as set forth herein. It is further

ORDERED that Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club shall charge the plant capacity charge until authorized to change by this Commission in a subsequent proceeding. It is further

ORDERED within 30 days from the date of the Consummating Order, Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club shall provide a revised tariff reflecting its approved service availability policy and plant capacity charge. The tariffs shall be effective on the stamped approval date. It is further

ORDERED that Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club's miscellaneous service and late payment charges are approved as set forth herein. It is further

ORDERED that within 10 days from the date of the Consummating Order, Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club shall provide notice of its approved plant capacity charge, miscellaneous service charge, and late payment charge. It is further

ORDERED that within 10 days after the notice of the approved plant capacity charge, miscellaneous service charge, and late payment charge is given, Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club shall file a copy of the notice along with a statement attesting to the date the notice was given. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, except for our decision granting the certificate and approving existing rates and charges, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further


ORDERED that if no timely protest is received to the issues regarding the service availability policy, the plant capacity charge, and the miscellaneous service charges, the Order will become final upon the issuance of a Consummating Order. It is further

ORDERED that the docket shall remain open pending receipt of a statement from the utility that it has established its books and records in compliance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts; verification that notice has been given to customers of the proposed plant capacity and miscellaneous service charges; verification of the installation of a water meter at the clubhouse; and receipt of a revised tariff sheet reflecting the approved service availability policy and plant capacity charge. Upon receipt and verification, the docket shall be administratively closed.

By ORDER of the Florida Public Service Commission this 7th day of July, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By:



Kay Flynn, Chief
Bureau of Records

(S E A L)

KEF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action regarding the service availability policy, the plant capacity charge, and the miscellaneous service charges is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 28, 2006. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating 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.

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 the Commission Clerk and Administrative Services 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 the Commission Clerk and Administrative Services 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.

Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club

Okeechobee County
Water Service Area
Serving the Blue Heron Golf & Country Club

Township 37 South, Range 35 East
Sections 22 and 27

From the Northeast corner of Section 27, Township 37 South, Range 35 East, also the Point of Beginning (POB). Thence along the East line of said section South $01^{\circ} 25' 40''$ West a distance of 2,556.51 feet, Thence along the North right-of-way of Taylor Creek the following 20 courses.

1. South $79^{\circ} 08' 01''$ West a distance of 1,600.16 feet.
2. North $56^{\circ} 29' 08''$ West a distance of 837.07 feet.
3. North $32^{\circ} 35' 16''$ West a distance of 548.73 feet.
4. North $24^{\circ} 01' 53''$ East a distance of 339.06 feet.
5. North $22^{\circ} 31' 31''$ East a distance of 91.97 feet.
6. North $07^{\circ} 41' 10''$ West a distance of 172.80 feet.
7. North $34^{\circ} 58' 02''$ West a distance of 367.10 feet.
8. North $74^{\circ} 41' 39''$ West a distance of 11.59 feet.
9. North $43^{\circ} 19' 20''$ West a distance of 74.55 feet.
10. North $41^{\circ} 31' 01''$ West a distance of 91.28 feet.
11. North $62^{\circ} 06' 12''$ West a distance of 185.53 feet.
12. North $71^{\circ} 32' 00''$ West a distance of 67.11 feet.
13. North $58^{\circ} 17' 23''$ West a distance of 65.40 feet
14. North $21^{\circ} 48' 02''$ West a distance of 41.11 feet.
15. North $24^{\circ} 54' 30''$ West a distance of 50.60 feet.
16. North $14^{\circ} 26' 57''$ East a distance of 79.16 feet.
17. North $17^{\circ} 01' 38''$ East a distance of 98.89 feet.
18. North $11^{\circ} 53' 20''$ West a distance of 59.62 feet.
19. North $88^{\circ} 27' 25''$ West a distance of .24 feet.
20. South $89^{\circ} 37' 36''$ East a distance of 92.02 feet now leaving Taylor Creek.

Thence North $00^{\circ} 22' 24''$ West a distance 55.00 feet.

Thence South $89^{\circ} 03' 43''$ East a distance of 59.98 feet.

Thence North $00^{\circ} 11' 29''$ East a distance of 1,578.84 feet. (Leaving Section 27 and entering Section 22)

Thence South $89^{\circ} 10' 16''$ East a distance of 290.00 feet.

Thence South $00^{\circ} 11' 29''$ West a distance of 115.04 feet.

Thence South $89^{\circ} 09' 56''$ East a distance of 667.11 feet.

Thence North $00^{\circ} 25' 16''$ East a distance of 330.07 feet.

Thence North $89^{\circ} 10' 09''$ West a distance of 668.43 feet.

**Attachment A
(continued)**

Thence North $00^{\circ} 11' 29''$ East a distance of 330.05 feet.
Thence South $89^{\circ} 09' 30''$ East a distance of 669.56 feet.
Thence South $89^{\circ} 10' 59''$ East a distance of 669.98 feet.
Thence South $00^{\circ} 39' 23''$ West a distance of 1,650.36 feet.
Thence South $89^{\circ} 10' 06''$ East a distance of 1,326.03 feet to the POB.

**DONALD E. McBRAYER AND MARTY STEVENS
d/b/a BLUE HERON GOLF & COUNTRY CLUB**

RATES AND CHARGES

Monthly Service Rates

Utility Existing and Staff Recommended

Base Facility Charge (includes first 3,000 gallons)	\$31.18
Charge per 1,000 gallons (after first 3,000 gallons)	\$4.08

Service Availability Charges

	Utility Existing	Staff Recommended
Meter Installation Charge	\$ 150.00	\$ 150.00
System Capacity Charge per ERC	\$1,250.00	
Plant Capacity Charge per ERC		\$ 400.00

Miscellaneous Service Charges

Utility Proposed and Staff Recommended

Initial Connection Fee	\$15.00
Normal Reconnection Fee	\$15.00
Violation Reconnection Fee	\$15.00
Premises Visit Fee (in lieu of disconnection)	\$10.00
Late Payment Fee	\$ 5.00