

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Bonita Center) DOCKET NO. 890739-SU
Treatment Plant, Inc. for original) ORDER NO. 22301
sewer certificate in Lee County.) ISSUED: 12-12-89
_____)

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
JOHN T. HERNDON

ORDER GRANTING CERTIFICATE

BY THE COMMISSION:

Background

On November 20, 1986, prior to the time exemptions were granted by Order, the Commission Staff sent a letter to Bonita Plaza Shopping Center (Bonita Center) advising Bonita Center that in its opinion, the sewer system was exempt from Florida Public Service Commission regulation in accordance with Section 367.022(7), Florida Statutes. This Section provides that "nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives . . ." are not subject to this Commission's regulation.

According to Bonita Center, the system was constructed in April, 1988. In February 1989, the Commission received a complaint from one of the store owners regarding an excessive sewer bill. During a field investigation, it was determined that Bonita Center never formed a nonprofit association and has been billing its customers specifically for sewer service. We advised the Utility that since it no longer qualified for exemption, it would have to obtain a certificate to operate the sewer system.

Application

On June 2, 1989, Bonita Center filed an application for a sewer certificate to provide service to the Bonita Springs Shopping Center. The application is in compliance with Section

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367.041, Florida Statutes, and Rule 25-30.035, Florida Administrative Code. The Utility has paid its filing fee and provided a long term lease for the land upon which the treatment facilities are located. Adequate territory and system maps have been filed. A territory description is attached to this Order as Attachment A and by reference incorporated herein. Noticing requirements have been met in accordance with Rule 25-30.030, Florida Administrative Code, and no objections to the application have been filed with the Commission. The time for filing objections has expired.

We have reviewed the financial statements of Bonita Center and find it to have adequate resources for the continued operation of the utility. The Department of Environmental Regulation (DER) has no outstanding citations or violations for this utility system.

Based on the above, we find that it is in the public interest to grant Sewer Certificate No. 458-S to Bonita Center to provide service to the territory described in Attachment A.

Rates and Charges

The Utility presently charges store owners \$4.00 per 1,000 gallons. The Utility serves only the Bonita Plaza Shopping center, which consists of 82 stores. The rate has been in existence since the inception of the Utility. We find the rate to be reasonable and it is, therefore, approved

Bonita Center does not currently assess any service availability, miscellaneous service charges or customer deposits. The service territory of the Utility is built-out. Therefore, we do not find it appropriate to approve service availability charges. However, if Bonita Center requests an amendment of its certificate in the future to serve additional territory, the issue of service availability charges will be considered at that time.

Regulatory Assessment Fees

Since Bonita Center was advised that it needed to file for an original certificate in February, 1989, Bonita Center is directed to pay regulatory assessment fees for the first six

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months of 1989. Bonita Center shall 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 Bonita Center Treatment Plant, Inc., 100 Australian Avenue, Suite 201, West Palm Beach, Florida 33406, is hereby granted Certificate No. 458-S to provide service to the territory described in Attachment A of this Order. It is further

ORDERED that Bonita Center shall charge the rates and charges approved in the body of this Order. It is further

ORDERED that Bonita Center shall file a tariff reflecting the rates, charges and service territory approved herein, within 20 days of the date of this Order. It is further

ORDERED that Bonita Center shall pay regulatory assessment fees for the first six months of 1989 within 45 days of the date of this Order. It is further

ORDERED that Docket No. 890739-SU is hereby closed.

By ORDER of the Florida Public Service Commission,
this 12th day of DECEMBER, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ALC

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A

LEGAL DESCRIPTION

COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 33 TOWNSHIP 47 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE N-89°-08'-20"-E. ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SAID SECTION 33 FOR A DISTANCE OF 25.00 FEET; THENCE N-01°-20'-50"-W. FOR A DISTANCE OF 50.00 FEET TO A POINT OF INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF WINDSOR ROAD, LEE COUNTY COMMISSION MINUTES BOOK NO. 6 PAGE 140 AND 155 (LEE COUNTY) WITH THE NEW (1987) NORTHERLY RIGHT-OF-WAY LINE OF BONITA BEACH ROAD (STATE ROAD NO. S-865) BEING 17.0' NORTH AND PARALLEL WITH THE SAME AS SHOWN ON THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP OF STATE ROAD NO. S-865 FOR LEE COUNTY, FLORIDA SECTION NO. 1260-150, AND THE POINT-OF-BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE N-01°-22'-50"-W. ALONG THE EASTERLY RIGHT-OF-WAY LINE OF WINDSOR ROAD FOR A DISTANCE OF 610.16 FEET TO A POINT ON THE NORTH LINE OF LOT 85 OF ARROYAL ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 3 AT PAGE 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE N-89°-09'-46"-E. ALONG THE NORTH LINE OF THE SAID LOT 85 FOR A DISTANCE OF 635.14 FEET TO THE SOUTHWEST CORNER OF LOT 75 OF THE SAID PLAT OF ARROYAL; THENCE N-01°-19'-30"-W. ALONG THE WEST LINES OF LOTS 75 AND 70 OF THE SAID PLAT OF ARROYAL FOR A DISTANCE OF 660.22 FEET TO THE NORTHWEST CORNER OF THE SAID LOT 70 ; THENCE FOR A DISTANCE OF 841.10 EAST TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 41 (STATE ROAD 45) AS THE SAME IS SHOWN ON THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, RIGHT-OF-WAY MAPS OF STATE ROAD NO. 45, BONITA SPRINGS BY-PASS; THENCE S-04°-53'-01"-E. ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 41, A DISTANCE OF 330.83 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 71; THENCE S-89°-07'-37"-W. ALONG SAID SOUTH LINE OF LOT 71, A DISTANCE OF 191.55 FEET; THENCE S-01°-22'-37"-E. A DISTANCE OF 250.10 FEET; THENCE N-89°-07'-37"-E. A DISTANCE OF 206.89 FEET TO A POINT ON THE ABOVE SAID WESTERLY RIGHT-OF-WAY OF U.S. HIGHWAY NO. 41; THENCE S-04°-53'-01"-E. ALONG SAID WESTERLY RIGHT-OF-WAY OF U.S. HIGHWAY NO. 41, A DISTANCE OF 285.54 FEET AN ANGLE POINT IN SAID RIGHT-OF-WAY; THENCE S-10°-35'-38"-E. ALONG SAID WESTERLY RIGHT-OF-WAY A DISTANCE OF 96.63 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY OF SMITH LANE AS THE SAME IS RECORDED IN DEED BOOK 232 PAGES 370 AND 371 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S-89°-07'-37"-W. ALONG SAID NORTHERLY RIGHT-OF-WAY OF SMITH LANE A DISTANCE OF 249.83 FEET A POINT IN THE CENTER LINE OF BOSTON ROAD, NOW VACATED; THENCE S-01°-22'-37"-E. A DISTANCE OF 295.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF BONITA BEACH ROAD (STATE ROAD NO. S-865) AS THE SAME IS SHOWN ON THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP FOR STATE ROAD NO. 45, INTERSECT RIGHT-OF-WAY BONITA SPRINGS BY-PASS, LEE COUNTY, FLORIDA; THENCE RUN S-89°-08'-20"-W. ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF BONITA BEACH ROAD (STATE ROAD NO. S-865) FOR A DISTANCE OF 92.48; THENCE RUN S-80°-18'-46"-W. ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF BONITA BEACH ROAD (STATE ROAD NO. S-865) FOR A DISTANCE OF 97.93 FEET TO THE SAID NEW RIGHT-OF-WAY; THENCE RUN S-89°-08'-20"-W. ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF BONITA BEACH ROAD (STATE ROAD NO. S-865) FOR A DISTANCE OF 1106.45 FEET TO THE POINT-OF-BEGINNING CONTAINING 31.61 ACRES, MORE OR LESS.