



# Public Service Commission

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DATE: MAY 6, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAY)

FROM: DIVISION OF WATER AND WASTEWATER (CLAPP, REDEMANN)  
DIVISION OF LEGAL SERVICES (CROSBY)

RE: DOCKET NO. 981338-WS - APPLICATION FOR GRANDFATHER  
CERTIFICATES TO OPERATE WATER AND WASTEWATER UTILITY IN  
POLK COUNTY BY PLANTATION LANDINGS, LTD.  
COUNTY: POLK

AGENDA: MAY 18, 1999 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR  
ISSUE 2 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\981338WS.RCM

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

CASE BACKGROUND

On May 14, 1996, the Board of County Commissioners of Polk County adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring privately owned water and wastewater utilities in that county to be subject to the provisions of Chapter 367, Florida Statutes. The resolution was acknowledged by this Commission on July 11, 1996 by Order No. PSC-96-0896-FOF-WS in Docket No. 960674-WS. Pursuant to Sections 367.031 and 367.171, Florida Statutes, a utility subject to the jurisdiction of this Commission must obtain a certificate of authorization.

Plantation Landings, Ltd. (Plantation or utility) is a Class C utility located in a water use caution area in Polk County. The utility has one water treatment plant, one wastewater treatment plant, one water distribution system, and one wastewater collection system. Water and wastewater services have been provided to Plantation Landings Mobile Home Park (PL Park) since 1987 under the provisions of Section 723, Florida Statutes, which governs mobile home park lot tenancies. Since Plantation's operations were subject to regulation under Chapter 723, Florida Statutes, the utility was never franchised by Polk County.

The utility currently serves approximately 395 mobile home customers in PL Park. The mobile homes are owned by the tenants of the park. All lots in the park are individually metered. The utility is in the Highlands Ridge Water Use Caution Area. In addition, the Southwest Florida Water Management District (SWFWMD) restricts irrigation to specific hours of the day.

On August 20-22, 1996, staff met in Polk County with all entities that could potentially be jurisdictional under Section 367, Florida Statutes, to explain the requirements for certification and the options for exemption under the statute. Subsequent to that meeting, a letter dated September 12, 1996 was sent to staff by legal counsel for an owner of a number of mobile home parks across the state including five other limited partnerships in Polk County similar to Plantation. The letter conveyed for staff's review and comments an Application for Declaratory Statement Relating to Exemption from Regulation or Non-jurisdictional Finding (Declaratory Statement) on behalf of CHC VII, Ltd. (CHC). The Declaratory Statement for CHC, was intended to cover the five other mobile home limited partnerships in Polk County including Plantation.

Unfortunately, the letter was misplaced by staff for a period of time. Once the letter was rediscovered, several conversations

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and meetings ensued between staff and the utility ensued. By letter dated August 10, 1998, staff informed the owner of the result of its review. Since CHC provided water and wastewater service for compensation, it was a utility under the definition in Section 367.021(12), Florida Statutes, and therefore jurisdictional. In addition, since there was specific charge for water or wastewater service, the landlord-tenant exemption contained in Section 367.022(5), Florida Statutes, could not apply. Further, it did not appear that CHC qualified for any other exemption contained in Section 367.022, Florida Statutes. As an analogous situation, staff cited the Commission's decision with regard to Lake Yale Utility Company in Docket No. 930133-WS. A copy of Order No. PSC-94-0171-FOF-WS, issued February 2, 1994 in that docket, was provided along with applications for original certificates.

At the time of staff's August 10, 1998 letter, the exact circumstances of the owner's other Polk County systems were not known. In the case of Plantation, it was subsequently learned that a non-jurisdictional finding and a landlord-tenant exemption pursuant to Section 367.022(5), Florida Statutes, could not apply for the same reasons given for CHC, and no other exemptions appear to apply.

By letter dated August 18, 1998, the owner expressed some concerns regarding the applications provided for CHC with staff's August 10th letter. The owner's primary concern was the dilemma of adjusting the utility's rates to cover the cost of the Commission's regulatory assessment fees (RAFs) while still complying with the mobile home park rental agreements under Chapter 723, Florida Statutes. By letter dated September 4, 1998, staff informed the owner that Section 367.011, Florida Statutes, provides the Commission with exclusive jurisdiction over utilities with regard to service, authority, and rates. The Commission's authority under Chapter 367, Florida Statutes, supersedes all other laws, agreements and contracts with regard to the exclusive jurisdiction set forth in Section 367.011, Florida Statutes.

Upon reconsideration, however, staff substituted applications for grandfather certificates in place of certificate applications for a utility in existence and charging rates. The latter application implies that the utility has been charging rates without regulatory oversight which was not the case. The only reason the owner's systems were not franchised by Polk County at the time of Commission jurisdiction was due to the fact that the Polk County Board of County Commissioners considered their operations to be governed by Chapter 723, Florida Statutes.

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In staff's September 4, 1998 response, the owner was also informed that, once the grandfather applications were filed for each utility, the owner may apply for a pass-through rate increase to accommodate RAFs and also request a staff-assisted rate case or limited proceeding to address any other operational expenses due to Commission regulation. Finally, the owner was informed that none of these rate options were prevented by park operation under Chapter 723, Florida Statutes. On October 14, 1998, a grandfather application on behalf of Plantation was timely filed opening this docket. Plantation also filed a Request for Representation by a Qualified Representative on November 13, 1998. By Order No. PSC-98-1629-PCO-WS, issued December 7, 1998, the Commission authorized Mr. Norman F. Mears to appear as Qualified Representative in this docket on behalf of Plantation.

On October 16, 1998, the utility applied for a 1998 pass-through rate adjustment. The pass-through rate adjustment was approved effective November 30, 1998. Meanwhile, on October 21, 1998, the utility received a standard letter from staff informing the owner of the obligation to file Annual Reports and to remit RAFs from the date of Commission jurisdiction on May 14, 1996. On December 21, 1998, Plantation filed a Petition for Waiver of Rule 25-30.110(3), Florida Administrative Code (F.A.C.), with regard the requirement to file annual reports for the years of 1996 and 1997 on the basis of substantial hardship. By letter of the same date to Mr. Charles Hill, Plantation also requested the Commission not require the remittance of RAFs for 1996 and 1997.

Docket No. 981916-WS was opened to address the Petition for Waiver of Rule 25-30.110(3), F.A.C. By Order No. PSC-99-0642-FOF-WS, issued April 5, 1999, the Commission granted the waiver of 1996 and 1997 annual reports requiring, instead, an affidavit certifying its revenues for 1996 and 1997. Annual Reports for 1998 were required to be filed in compliance with Rule 25-30.110(3), F.A.C. The appropriate starting date for the responsibility for RAFs was deferred to the Commission's decision in this docket. This recommendation, therefore, addresses the issues of authorizing grandfather certificates, determining appropriate rates and charges, and setting the effective date for RAFs responsibility for Plantation.

DISCUSSION OF ISSUES

ISSUE 1: Should the application of Plantation Landings, Ltd., for grandfather certificates in Polk County be granted?

RECOMMENDATION: Yes, Plantation Landings, Ltd., should be granted Water Certificate No. 606-W and Wastewater Certificate 522-S to serve the territory described in Attachment A. The jurisdictional date for purposes of certification should be May 14, 1996. (CLAPP, REDEMANN, CROSBY)

STAFF ANALYSIS: As discussed in the case background, the Board of County Commissioners of Polk County transferred jurisdiction of the privately owned water and wastewater utilities in Polk County to this Commission on May 14, 1996. Under the circumstances detailed in the case background, an application on behalf of Plantation for grandfather certificates to provide water and wastewater service in Polk County was filed with the Commission on October 14, 1998. Since the utility has filed under a grandfather application, the appropriate jurisdictional date for purposes of certification should be May 14, 1996.

The application contained a few deficiencies which included an inconsistency between the legal description and the territory maps, and a lack of complete permit information. All deficiencies were corrected and the application considered filed on April 6, 1999.

As amended, the application is in compliance with Section 367.171(2)(b), Florida Statutes, and other pertinent statutes and administrative rules concerning application for grandfather certificates. The application contained the appropriate filing fee pursuant to Rule 25-30.020, F.A.C. Notice for grandfather certificates is not required by Florida Statutes or Commission rules.

The application indicates that Plantation Landings, Ltd., is a limited partnership established in 1987. According to the application, T & A Investments, Inc., owns 72.5% of the partnership; Mr. Raymond Moats owns 12.5%; Mr. G. Willard Howe owns 10%; and Century Realty Funds, Inc., owns the remaining 5%. A warranty deed that conveyed the land to Plantation as of December 20, 1991 was provided as proof the utility owns the land upon which the utility facilities are located pursuant to the requirements of Rule 25-30.036(6), F.A.C.

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An accurate legal description and adequate territory and system maps have been provided as prescribed by Rules 25-30.035(9), (10), and (11), F.A.C. A description of the territory is appended to this memorandum as Attachment A. The territory served consists entirely of residential mobile homes on 5/8 x 3/4" meters. The territory has 395 lots with a built-out capacity of 405 lots.

The utility is located on 213 acres of land in the Highlands Ridge Water Use Caution Area approximately 1.5 miles west of Haines City. The water requirement is for 395 mobile homes. There are no reuse facilities and no such facilities have been required by any regulatory authority.

In Polk County, water withdrawal is regulated by SWFWMD; water environmental compliance is regulated by the Polk County Health Department (PCHD); and wastewater environmental compliance is regulated by the Florida Department of Environmental Protection (FDEP). Plantation holds SWFWMD Permit No. 208753.02 issued on July 25, 1995. The permit is scheduled to expire July 25, 2005. The utility holds PCHD Public Water Systems (PWS) Id No. 6531000. The utility was inspected within the last twelve months and some corrective actions cited. The utility holds FDEP Wastewater Permit No. DO53-243034, which was last modified on April 30, 1993. The utility submitted an application for renewal of the wastewater permit to FDEP. According to the application and staff's independent verification with SWFWMD, PCHD, and FDEP, the utility is essentially in compliance with all requirements of these agencies.

Based on the all the above information, staff recommends that Plantation Landings, Ltd., be granted Water Certificate No. 606-W and Wastewater Certificate No. 522-S to serve the territory described in Attachment A. The jurisdictional date for purposes of certification should be May 14, 1996.

**ISSUE 2:** What rates and charges should be approved for Plantation Landings, Ltd.?

**RECOMMENDATION:** The rates and charges as detailed in the staff analysis for Plantation Landings, Ltd., should be approved. The tariff sheets effective November 30, 1998 pursuant to the 1998 pass-through rate adjustment should supersede those filed in this docket. All other tariff provisions should be made effective on or after the stamped approval date. (CLAPP)

**STAFF ANALYSIS:** While the utility has been in existence and charging rates since 1987, the following combined rates for water and wastewater service were put into effect on July 28, 1987. Subsequent to the utility filing for grandfather certificates, a pass-through rate adjustment was administratively approved effective November 30, 1998. The purpose of the adjustment was to allow the utility to begin collecting the additional costs of regulatory assessment fees while its application for grandfather certificates was being processed.

In staff's November 15, 1998 letter transmitting the pass-through tariff sheets, the utility was advised that the tariff sheets were first revised sheets but that the utility's original tariffs had not yet been approved. The utility was also informed that the original tariffs would be approved when the grandfather certificates were granted and would contain the lower rates. For informational purposes, the utility's rates pursuant to the pass-through rate adjustment are listed after the utility's existing rates at the time of this application. If the Commission approves the original rates recommended by staff in this issue, then the pass-through rates will revise the original rates.

For the reasons that will be discussed below, staff is recommending that the Commission approve the utility's existing rates and charges at the time of this filing along with the Commission's standard meter test deposits. The utility does not charge a meter deposit and none is required by Commission rule. The utility has adopted the Commission's standard meter test deposits but has chosen not to adopt the standard miscellaneous service charges. There is no service availability policy or charge since PL Park will furnish all connections for residents moving onto any of the remaining ten lots.

Water and Wastewater Service (Original Rates)

Billing Period: Monthly  
Minimum Charge: \$12.00  
Water and Wastewater rate for 5/8 x 3/4" meters:  
Up to 3,000 gallons \$12.00  
per 1,000 gal. over 3,000 \$ 1.20

Water and Wastewater Service (Pass-Through Rates)

Billing Period: Monthly  
Minimum Charge: \$12.57  
Up to 3,000 gallons \$12.57  
per 1,000 gal. over 3,000 \$ 1.26

Customer Deposits

N/A - deposits are not required

Meter Test Deposits

<u>Meter Size</u>	<u>Fee</u>
5/8 x 3/4"	\$20.00
1" and 1-1/2"	\$25.00
2" and over	Actual Cost

Miscellaneous Service Charges

N/A - deposits are not required.

Service Availability Charge

None.



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The utility's existing rates and charges are somewhat unusual in two respects. First, the Commission normally allocates rates and charges to water and wastewater service separately based on the relative costs to provide each service instead of combining the rates. Second, the Commission normally discourages combining a usage amount in the base facility (or minimum) charge. The structure was based on the \$12.00 per month minimum fee the utility was charging for water and wastewater service combined. Shortly after the filing of this application, staff asked for additional information to estimate the relative costs to provide each service as well as to separate a base facility charge from the usage rate. Due to the following claims by the utility of substantial hardships and due to the fact that a pass-through adjustment has been implemented in the interim, staff is not recommending that an adjustment to rate structure be pursued in this docket.

Since the owner has six pending applications for grandfather certificates, the owner claims not to have the additional staff necessary to simultaneously develop the requisite information to revise the rate structures for all six utilities. Changes to the rate structure would also require the utility to pay reprogramming costs for its billing program and legal costs to prepare and file a prospectus change for each mobile home park. In addition to the legal costs to change each prospectus, the owner would also have to pay a filing fee equal to ten dollars (\$10.00) per lot for all its mobile home parks simultaneously. It is estimated that the preparation, filing, and processing of each prospectus would take three months. The owner would then have to give its customers ninety (90) days notice. For these reasons of costs and timing, the owner does not believe the Commission can fairly impose a change in rate structure without concurrently authorizing an increase in rates to offset the additional costs. Instead, the owner respectfully suggests that an application for grandfather certificates is not the proper forum in which to fairly address all these matters.

In addition to the concerns of the owner, there is also a tariff obstacle to changing the utility's rate structure at this time. As noted in the Case Background, and as discussed more fully in Issue 3, prior to the completion of the filing requirements for the application for grandfather certificates, a pass-through rate adjustment was approved effective November 30, 1998. The pass-through adjustment was to enable the utility to begin collecting the additional costs of RAFs. Having no other basis to use at the time, the pass-through rate adjustment was set up to be the first revised schedule to the rates and charges in existence at the time the grandfather application was filed. Therefore, in order for the

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tariffs to be consistent, the initial rates and charges approved for Plantation should be those in existence at the time of the filing.

Finally, staff would note that water conservation for Plantation is strictly controlled by SWFWMD. The agency is responsible for enforcing a tight irrigation schedule for discretionary water use as well as tight monitoring of water use through water audits. As noted in the Case Background, irrigation is only allowed during specific hours. Based on SWFWMD's enforcement actions, it is unlikely that modifications to the utility's existing rate structure would achieve enough additional conservation to warrant the costs of the modification claimed by the owner.

For all the above reasons, staff recommends that the rates and charges for the utility in effect at the time of this filing be approved as original tariff rates along with the Commission's standard meter test deposits. The first revised tariff sheets effective November 30, 1998 pursuant to the 1998 pass-through rate adjustment should supersede those approved in this recommendation. The revised pass-through rate adjustment, the charges for meter test deposits and all other tariff provisions should be made effective on or after the stamped approval date.

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**ISSUE 3:** Should Plantation Landings, Ltd., be responsible for regulatory assessment fees commencing December 1, 1998?

**RECOMMENDATION:** Yes, Plantation Landings, Ltd., should be responsible for regulatory assessment fees commencing December 1, 1998. The utility should be required to remit the resulting 1998 RAFs within 30 days from the date of the order in this docket. (CLAPP)

**STAFF ANALYSIS:** As noted in the Case Background, by means of a standard letter for Polk County grandfathers dated October 21, 1998, the utility was informed of the obligation to file Annual Reports and to remit RAFs from the date of Commission jurisdiction in Polk County on May 14, 1996. On December 21, 1998, the utility filed a Petition for Waiver of Rule 25-30.110(3), F.A.C., for 1996 and 1997 annual reports on the basis of substantial hardship and violation of principles of fairness. By separate letter of the same date to Mr. Charles Hill, the utility requested the Commission also not require the remittance of RAFs for the years of 1996 and 1997 due to the unique circumstances leading to the delayed recognition of Plantation as a utility subject to the Commission's jurisdiction. By facsimile to staff counsel dated April 28, 1999, the utility requested responsibility for RAFs commence on or after December 1, 1998.

The petition for a Waiver of Rule 25-30.110(3), F.A.C., was addressed by Order No. PSC-99-0638-FOF-WS, issued April 5, 1999 in Docket No. 981912-WS. In that order, the Commission granted the waiver of annual reports for 1996 and 1997 based upon a violation of principles of fairness pursuant to Section 120.542, Florida Statutes. Instead, the utility was required to file an affidavit certifying its revenues for 1996 and 1997. The utility was also required to file an annual report for 1998 in compliance with rule 25-30.110(3), F.A.C. However, the appropriate starting date for the responsibility for RAFs was deferred to the Commission's decision in this docket.

Meanwhile, on October 16, 1998, the utility filed Notice of Intention to Implement the Regulatory Assessment Fee Pass-Through Rate Adjustment. The adjustment was approved effective November 30, 1998. In the utility's December 21, 1998 letter to Mr. Charles Hill, it requested that the Commission set the starting date for remittance of RAFs for the first billing cycle after the effective date of the 1998 pass-through rate adjustment to enable the utility to recoup the cost of RAFs owed the Commission. In that request, the utility noted that the pass-through rate adjustment allows the

utility to recover the cost of RAFs, prospectively, but cannot provide the funds to pay RAFs for two years in arrears. The utility claimed that to require payment for RAFs for two years in arrears would be an undue financial hardship. In its facsimile letter dated April 28, 1999, the utility reiterated its request for responsibility for RAFs to commence subsequent to the 1998 pass-through.

In addition to the reasons set forth by the utility, staff would also note that it normally recommends that responsibility for RAFs start in the year in which the utility is informed, with certainty, that the Commission's jurisdiction applies. Although the utility was informed in 1996 of the Commission's potential jurisdiction, it was not officially notified until August of 1998 that an exemption from regulation or non-jurisdictional finding could not apply under Section 367, Florida Statutes. Therefore, the year in which the utility knew with certainty that Commission jurisdiction applied was 1998. Since the utility noticed and received a 1998 pass-through rate adjustment in order to generate the revenues necessary to remit RAFs, the effective date of the pass-through adjustment appears to be the most appropriate starting date for RAF responsibility.

For these reasons, staff recommends that Plantation's responsibility for regulatory assessment fees begin December 1, 1998. The utility should be required to remit any resulting 1998 RAFs within 30 days from the date of the order in this docket.

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**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** Yes, upon the expiration of the protest period, the docket should be closed if no timely protest to the proposed agency action issue is filed. (CROSBY)

**STAFF ANALYSIS:** If there are no timely protests to the proposed agency action issue (Issue No. 2), no further actions are required and this docket should be closed.

PLANTATION LANDINGS, LTD.

WATER AND WASTEWATER SERVICE AREA

POLK COUNTY

In Part of Section 25, Township 27 South, Range 26 East, and Section 31, Township 27 South, Range 27 East, Polk County, Florida described as follows:

Section 25, Township 27 South, Range 26 East, Commence at the Southwest corner of the SE 1/4 of the SW 1/4 of the NE 1/4, thence run N 89°50'54" E a distance of 366.37 feet to the Point of Beginning; thence run N 00°07'52" W a distance of 70.32 feet; thence run S 79°37'37" E along the southerly boundary line of U.S. 17-92 (State Road 600) to the intersection of said line with the North boundary line of said South 1/2 of Section 25; thence run S 89°50'54" W to the Point of Beginning; and

That part of the East 3/4 of the South 1/2 of Section 25, Township 27 South, Range 26 East which lies south of U.S. 17-92 (State Road 600) LESS AND EXCEPT the following tracts of land:

- A. The North 208.71 feet of the Easterly 869.6 feet of the NE 1/4 of the SW 1/4 of Section 25.
- B. That certain parcel of land described as follows: commence at the center of Section 25, Township 27 South, Range 26 East; thence run S 00°12'09" E along the quarter line a distance of 138.44 feet; thence run S 79°38'00" E a distance of 674.55 feet; thence run N 00°10'00" W a distance of 261.60 feet; thence run westerly along the North boundary line of the S 1/2 of said Section 25 to the Point of Beginning.
- C. The East 1/4 of the NE 1/4 of the SE 1/4 and West 1/2 of the NE 1/4 of the NE 1/4 of the SE 1/4 of said Section 25.
- D. The South 600 feet of the North 612.93 feet of the West 200 feet of the East 240 feet of the SE 1/4 of the SE 1/4 of Section 25.

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Section 31, Township 27 South, Range 27 East Plantation Landings  
(percolation pond)

Commence at the Northwest corner of Section 31, Township 27 South, Range 27 East, Polk County, Florida run S 00°00'54" W, along the West boundary of said Section 31, a distance of 30.0 feet to the Point of Beginning; thence run N 89°38'18" E a distance of 558.0 feet; thence run S 00°16'22" W, a distance of 37.81 feet; thence run S 86°35'00" E, a distance of 688.0 feet; thence run S 03°00'00" E, a distance of 295.0 feet; thence run N 83°07'00" W, a distance of 925.0 feet; thence run N 04°25'00" E, a distance of 237.0 feet; thence run S 89°38'18" W, a distance of 360.0 feet to a point in the West boundary of said Section 31; thence run N 00°03'54" E, a distance of 25.0 feet to the Point of Beginning. LESS AND EXCEPT the West 25.0 feet, thereof, for road Right-of-Way of Dyson Road.