

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
grandfather certificates to
operate water and wastewater
utility in Polk County by
Plantation Landings, Ltd.

DOCKET NO. 981338-WS
ORDER NO. PSC-99-1227-PAA-WS
ISSUED: June 21, 1999

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER GRANTING GRANDFATHER CERTIFICATES

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 setting rates and 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 October 14, 1998, Plantation Landings, Ltd. (Plantation Landings or utility) filed an application for grandfather certificates to provide water and wastewater service in Polk County, pursuant to Section 367.171, Florida Statutes. Plantation Landings is a Class C utility located in the Highlands Ridge Water Use Caution Area.

DOCUMENT NUMBER-DATE

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PSC-BUSINESS/REPORTING

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Plantation Landings currently serves approximately 395 mobile home sites in the Plantation Landings Mobile Home Park. The mobile home park has the capacity of 405 lots at buildout. Plantation Landings has provided service to the park since 1987. The mobile home park consists of residential mobile homes, which are individually metered. The utility has one water treatment plant, one wastewater treatment plant, one water distribution system, and one wastewater collection system.

According to the application, Plantation Landings is a limited partnership formed in 1987. T & A Investments, Inc., owns 72.5 percent of the limited partnership; Mr. Raymond Moats owns 12.5 percent; Mr. G. Willard Howe owns 10 percent; and Century Realty Funds, Inc. owns the remaining 5 percent.

The Commission received jurisdiction in Polk County (County) on May 14, 1996, after the Board of County Commissioners adopted a resolution declaring utilities in the County to be subject to the provisions of Chapter 367, Florida Statutes. On August 20-22, 1996, the Commission staff met with all entities in Polk County that could potentially be jurisdictional under Chapter 367, Florida Statutes, to explain the requirements for certification and the options for exemption. By letter dated September 12, 1996, legal counsel for an owner of a number of mobile home parks across the State of Florida sent a letter to the Commission conveying an Application for Declaratory Statement Relating to Exemption from Regulation or Non-jurisdictional Finding (Application for Declaratory Statement) on behalf of CHC VII, Ltd. (CHC). The Application for Declaratory Statement was also intended to cover five other mobile home limited partnerships in Polk County, including Plantation Landings, Ltd.

Unfortunately the letter was misplaced for a period of time. Once it was rediscovered, several conversations and meetings were held between staff, legal counsel of the utilities and the owner. After reviewing the Application for Declaratory Statement and the information provided by the utility, it was determined that because CHC provided water and wastewater service for compensation, it was a utility pursuant to Section 367.021(12), Florida Statutes, and, therefore, jurisdictional. In addition, since there was a specific charge for water and wastewater service, CHC did not qualify for exemption pursuant to Section 367.022, Florida Statutes. By letter dated August 10, 1998, the owner was informed of our findings. The letter also included applications for original certificates.

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At the time of the August 10, 1998 letter, all of the details regarding the owner's other systems were not known. In the case of Plantation Landings, it was subsequently determined that the system did not qualify for exemption, pursuant to Section 367.022, Florida Statutes, or a non-jurisdictional finding, pursuant to Section 367.021, Florida Statutes.

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

Upon reconsideration of the information provided, applications for grandfather certificates were sent to the utilities in place of applications for certificates for utilities in existence and charging rates. The latter application contemplates that the utility has been operating without regulatory oversight, which was not the case. The systems were not franchised by Polk County because the Polk County Board of County Commissioners considered the systems' operations to be governed by Chapter 723, Florida Statutes.

In the September 4, 1998 letter, the owner of the systems was informed that after he filed the applications, he could apply for a pass-through rate increase to accommodate the RAFs and also request a staff-assisted rate case or limited proceeding to address any other operational expenses due to Commission regulation. As stated previously, Plantation Landings, Ltd. filed an application for a grandfather certificate on October 14, 1998.

On October 14, 1998, Plantation Landings filed a Request for Representation by a Qualified Representative. By Order No. PSC-98-1629-PCO-WS, issued December 7, 1998, the Commission authorized Mr. Norman F. Mears to appear as Qualified Representative on behalf of Plantation Landings, Ltd. in this docket.

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Plantation Landings applied for a 1998 pass-through rate adjustment on October 16, 1998. The pass-through rate adjustment became effective on November 30, 1998.

On October 21, 1998, the utility was informed of its obligation to file annual reports and to pay RAFs from the date of Commission jurisdiction, May 14, 1996. On December 21, 1998, the owner filed a Petition for Waiver of Rule 25-30.110(3), Florida Administrative Code, with regard to the requirement to file annual reports for 1996 and 1997 on the basis of substantial hardship. By letter of the same date, Plantation Landings, Ltd. requested that the Commission not require the remittance of RAFs for 1996 and 1997.

Docket No. 981916-WS was opened to address the rule waiver request. By Order No. PSC-99-0642-FOF-WS, issued on April 5, 1999, we granted the waiver, requiring instead an affidavit certifying Plantation Landings' revenues for 1996 and 1997. The utility was required to file an annual report for 1998 in accordance with Rule 25-30.110(3), Florida Administrative Code. The appropriate date for responsibility for RAFs was deferred to our decision in this docket. Payment of RAFs is addressed later in this Order.

Application

The application as originally filed contained a few deficiencies. The deficiencies were corrected on May 3, 1999. The application is now in compliance with Section 367.171, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contained the correct filing fee, as prescribed by Rule 25-30.020, Florida Administrative Code. Plantation Landings provided evidence, in the form of a warranty deed, that it owns the land upon which its facilities are located, in accordance with Rule 25-30.036(6), Florida Administrative Code.

Notice of applications for grandfather certificates is not required by Florida Statutes or Commission rules. Therefore, no notice of Plantation Landings, Ltd.'s application was given.

Adequate service territory and system maps and a territory description have been provided, as prescribed by Rules 25-30.035 (9), (10), and (11), Florida Administrative Code. A description of the territory Plantation Landings, Ltd. has requested to serve is

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shown on Attachment A of this Order, which by reference is incorporated herein.

According to the application, water withdrawal is regulated by the Southwest Florida Water Management District (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 (DEP). Plantation Landings holds SWFWMD Permit No. 208753.02, issued on July 25, 1995. The permit is scheduled to expire on July 25, 2005. Plantation Landings holds PCHD Public Water System Id No. 6531000. The utility was inspected within the last twelve months and some corrective actions were cited. The utility also holds DEP Wastewater Permit No. D053-243034, which was last modified on April 30, 1993. The utility has submitted an application for renewal of the permit to DEP. According to the application and SWFWMD, PCHD, and DEP, the utility is essentially in compliance with all requirements of these agencies.

Based on the foregoing, we find it appropriate to grant Certificates Nos. 606-W and 522-S to Plantation Landings. The territory Plantation Landings is authorized to serve is described on Attachment A of this Order.

Rates and Charges

Although Plantation Landings has been in existence and charging rates since 1987, the utility's current rates became effective on July 28, 1987, pursuant to Section 723, Florida Statutes. A pass-through rate adjustment was administratively approved for Plantation Landings effective November 30, 1998. The purpose of the adjustment was to allow the utility to begin collecting the additional cost due to payment of RAFs. Plantation Landings' current rates, including the pass-through rate adjustment, are shown below.

Water and Wastewater Service

Billing Period:	Monthly
Minimum Charge:	\$ 12.57
Up to 3,000 Gallons	\$ 12.57
Per 1,000 Gallons	
over 3,000 Gallons	\$ 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

None

Service Availability Charges

None

The utility's existing rates and charges are somewhat unusual in that, normally, the Commission allocates rates and charges to water and wastewater service separately based on the relative costs to provide each service instead of combining the rates. Also, the Commission normally discourages combining a usage amount in the base facility (or minimum) charge.

Shortly after the application was filed, the utility was asked for additional information to estimate the relative costs to provide each service as well as to separate the base facility charge from the usage rate. According to the utility, providing the information requested would cause substantial hardship.

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Because the owner has pending applications for grandfather certificates for five utilities (CHC VII, Ltd., Four Lakes Golf Club, Ltd., Anglers Cove West, Ltd., S. V. Utilities, Ltd., and Hidden Cove, Ltd.), in addition to Plantation Landings, Ltd., he does not have the staff necessary to provide the information requested. In addition, changes in the rate structure would 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. The owner would also be required to pay a filing fee equal to \$10.00 per lot for all of 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 days notice.

The owner believes that it would be unfair of the Commission to impose a change in rate structure without concurrently authorizing an increase in rates to offset the additional costs. Further, the owner does not believe that an application for a grandfather certificate is the proper forum in which to address these matters.

In addition, it should be noted that Plantation Landings' system is entirely metered, and water conservation 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 audits. Irrigation is allowed only during specific hours. Therefore, it is unlikely that modifications to the utility's existing rate structure would achieve enough additional conservation to warrant the costs of such modifications to the owner.

Based on the foregoing, we find the rates and charges set forth above to be reasonable, and they are approved. Plantation Landings shall continue to charge these rates and charges until authorized to change by this Commission in a subsequent proceeding. The utility has filed a tariff which reflects the rates approved herein. The first revised tariff sheets effective November 30, 1998, pursuant to the 1998 pass-through rate adjustment shall supersede those filed in this docket. All other tariff provisions shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

Regulatory Assessment Fees

As stated previously, this Commission received jurisdiction in Polk County on May 14, 1996. By letter dated September 12, 1996, legal counsel for an owner of a number of mobile home parks in Florida sent a letter requesting a determination by the Commission as to whether or not the mobile home parks were jurisdictional. Because the letter was inadvertently misplaced, response to the letter was delayed until August 10, 1998, at which time the owner was informed that all of the systems, including Plantation Landings were jurisdictional.

On October 21, 1998, Plantation Landings was informed of the obligation to file annual reports and to remit RAFs from May 14, 1996. On December 21, 1998, Plantation Landings filed a Petition for Waiver of Rule 25-30.110(3), Florida Administrative Code. As the basis of its Petition, the utility cited substantial hardship and stated that requiring the filing of the 1996 and 1997 annual reports violated the principles of fairness. In a separate letter of the same date, the utility requested that we 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 Landings as a utility subject to our jurisdiction. The utility further requested that responsibility for payment of RAFs commence on or after December 1, 1998.

The Petition for Waiver of Rule 25-30.110(3), Florida Administrative Code, was addressed in Docket No. 981912-WS. By Order No. PSC-99-0638-FOF-WS, issued on April 5, 1999, in that docket, we granted the waiver. We found in that Order that requiring the utility to file annual reports for 1996 and 1997 would violate the principles of fairness, pursuant to Section 120.542, Florida Statutes. The Order further required the utility to file an affidavit certifying its revenues for 1996 and 1997. The utility was required to file an annual report for 1998 in accordance with Rule 25-30.110(3), Florida Administrative Code. The date of responsibility for payment of RAFs was deferred to the Commission's decision in the instant docket.

On October 16, 1998, Plantation Landings, Ltd. filed a Notice of Intention to Implement the Regulatory Assessment Fee Pass-Through Rate Adjustment. The adjustment became effective on November 30, 1998. The utility requested that the starting date for the remittance of RAFs be the first billing cycle after the effective date of the pass-through rate adjustment to enable the

utility to recoup the cost of the RAFs owed the Commission. This date was requested because the pass-through rate adjustment allows the utility to recover the cost of RAFs, prospectively, but does not provide the funds to pay the fees for two years in arrears. According to the utility, payment of RAFs for 1996 and 1997 would be an undue financial hardship.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, as indicated by the letter dated September 12, 1996, there was confusion on the owner's part as to whether or not the utilities were jurisdictional. Had we responded to the letter in a timely manner, the owner would have been informed in 1996 that the utility was jurisdictional and would have filed an application for a grandfather certificate at that time. As part of the certification procedure, the owner would have been informed of the obligation to pay RAFs and could have requested a pass-through rate adjustment to recover the cost of the fees. However, at this time, the utility has no way to recoup the cost of paying RAFs for 1996 and 1997.

Based on the foregoing, we find that to require the utility to pay RAFs for 1996 and 1997 would cause Plantation Landings undue financial hardship and violate the principles of fairness. We further find that the requirement to pay RAFs shall commence on December 1, 1998. Plantation Landings shall remit any outstanding RAFs for 1998 within 30 days of the issuance date of this Order.

It is, therefore,

ORDERED by the Florida Public Service Commission that Plantation Landings, Ltd., Post Office Box 5252, Lakeland, Florida, 33807-5252, is hereby granted Certificates Nos. 606-W and 522-S. The territory Plantation Landings, Ltd. is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that the rates and charges set forth herein are hereby approved. Plantation Landings, Ltd. shall charge these rates and charges until authorized to change by this Commission in a subsequent proceeding. Plantation Landings, Ltd.'s first revised tariff sheets, which became effective on November 30, 1998, pursuant to the 1998 pass-through rate adjustment, shall supersede the tariffs filed in this docket. All other tariff provisions shall be effective for service rendered or connections made on or

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after the stamped approval date on the tariff sheets. It is further

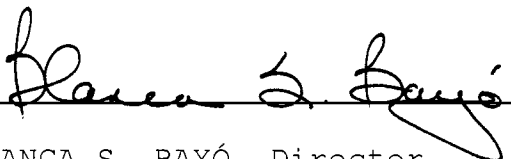
ORDERED that Plantation Landings, Ltd.'s obligation to pay regulatory assessment fees shall commence on December 1, 1998. It is further

ORDERED that Plantation Landings, Ltd. shall pay regulatory assessment fees due for 1998 within 30 days of the issuance date of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, 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 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" 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 21st day of June, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

ALC

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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 setting rates and 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 Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 12, 1999. 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 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

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 Southeast 1/4 of the Southwest 1/4 of the Northeast 1/4, thence run North 89°50'54" East a distance of 366.37 feet to the Point of Beginning; thence run North 00°07'52" West a distance of 70.32 feet; thence run South 79°37'37" East 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 South 89°50'54" West 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 Northeast 1/4 of the Southwest 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 South 00°12'09" East along the quarter line a distance of 138.44 feet; thence run South 79°38'00" East a distance of 674.55 feet; thence run North 00°10'00" West 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 Northeast 1/4 of the Southeast 1/4 and West 1/2 of the Northeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of said Section 25.

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D. The South 600 feet of the North 612.93 feet of the West 200 feet of the East 240 feet of the Southeast 1/4 of the Southeast 1/4 of Section 25.

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 South 00°00'54" West, along the West boundary of said Section 31, a distance of 30.0 feet to the Point of Beginning; thence run North 89°38'18" East a distance of 558.0 feet; thence run South 00°16'22" West, a distance of 37.81 feet; thence run South 86°35'00" East, a distance of 688.0 feet; thence run South 03°00'00" East, a distance of 295.0 feet; thence run North 83°07'00" West, a distance of 925.0 feet; thence run North 04°25'00" East, a distance of 237.0 feet; thence run South 89°38'18" West, a distance of 360.0 feet to a point in the West boundary of said Section 31; thence run North 00°03'54" East, 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.

M E M O R A N D U M

RECEIVED-FPSC

99 JUN 21 PM 1:54

June 16, 1999

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (CROSBY) *RY*
RE: DOCKET NO. 981338-WS - APPLICATION FOR GRANDFATHER
CERTIFICATES TO OPERATE WATER AND WASTEWATER UTILITY IN
POLK COUNTY BY PLANTATION LANDINGS, LTD.

99-1227-PAA

Attached is an ORDER GRANTING GRANDFATHER CERTIFICATES AND
NOTICE OF PROPOSED AGENCY ACTION ORDER SETTING RATES AND CHARGES,
to be issued in the above-referenced docket.

(Number of pages in order - 13)

ALC/dr

Attachment

cc: Division of Water and Wastewater (Clapp, Redemann)

I:\981338A.ALC

(3)
See p. 4, 8, 9
This is PAA right?
yes

4.25.2/0:

Requisition for Photocopying and Mailing

Date 6/24 / 99 / 99
Number of Originals 7 Copies Per Original 20
Requested By Muth

Item Presented
Agenda For (Date) _____ Order No. 99-12-7 In Docket No. 781338
Notice of _____ For (Date) _____ In Docket No. _____
Other _____

Special Handling Instructions

Distribution/Mailing

Number	Distributed/Mailed To	Number	Distribution/Mailed To
<u>19</u>	<u>Commission Offices</u>	<u>1</u>	<u>Clerk</u>
<u>1</u>	<u>Docket Mailing List - Mailed</u>		<u>(Polk)</u>
<u>1</u>	<u>Docket Mailing List - Faxed</u>		

Note: Items must be mailed and/or returned within one working day after issue unless specified here:

Print Shop Verification

Job Number 217 Verified By Michael
Date and Time Completed 6/24 Job Checked For Correctness and Quality (Initial) !!

Mail Room Verification

Date Mailed 6/24 Verified By [Signature]