

ORIGINAL

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: August 31, 1999

TO: Division of Legal Services (Crossman)  
Division of Records and Reporting

FROM: Division of Water and Wastewater (Brady) *Pb bbrady*

RE: Docket No. 990618-WU, Request for acknowledgment of small system exemption from Florida Public Service Commission regulation for provision of water service in Washington County by Holmes Creek Water Utilities, and cancellation of Certificate No. 538-W.

Holmes Creek Water Utilities (Holmes Creek or utility) is a Class C utility currently providing water service to approximately 12 year-round lots and 21 camp sites in the Holmes Creek Camp Site located in Washington County. Wastewater service is provided by septic systems. According to its 1998 Annual Report, the utility's operating revenues were \$8,485.25 with a net operating loss of \$2,497.71 (as adjusted by staff).

By letter dated April 6, 1999, the utility owner, Mr. Richard Peterson, Sr., confirmed a phone conversation with staff in which he discussed the reclassification of Holmes Creek to a small plant. In his letter, Mr. Peterson requested that:

Since Holmes Creek Water Utilities has been reclassified by DEP...and the total number of hook-ups being serviced has dropped to thirty-three (33) in the past few years, I would like to also be reclassified by the Public Service Commission.

As a consequence, on May 13, 1999, staff established a docket to process the request as an acknowledgment of Holmes Creek as a small system pursuant to Section 367.022(6), Florida Statutes, which exempts from Commission regulation "systems with the capacity or proposed capacity to serve 100 or fewer persons." Since there are two components to capacity, treatment facilities and distribution or collection system, Rule 25-30.055, Florida Administrative Code, implements Section 367.022(6), Florida Statutes as follows:

A water or wastewater system is exempt under Section 367.022(6), Florida Statutes, if its current or proposed water or wastewater treatment facilities and distribution or collection system have and will have a capacity, excluding fire flow capacity, of no greater than 10,000 gallons per day or if the entire system is designed to serve no greater than 40 equivalent residential connections (ERCs). (Emphasis added.)

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If either facility capacity or line design capacity meet the limitations of this rule, then the system would be exempt from Commission regulation as a small system pursuant Section 367.022(6), Florida Statutes. Holmes Creek currently has two water wells with the combined treatment capacity of 36,000 gallons per day (gpd). Based on treatment facilities, Holmes Creek does not qualify for a small system exemption. However, based on the following information, Holmes Creek does appear to have capacity limitations on its distribution lines such that the entire system is now designed to serve no greater than 40 ERCs.

When Holmes Creek was originally certified by Order No. 25786, issued February 24, 1992, in Docket No. 910979-WU, the camp site was designed to provide service to 181 mobile home lots or 144.8 ERCs. (For purposes of Rule 25-30.055, Florida Administrative Code, a mobile home equals 0.8 ERCs per unit or connection.) Twenty-six of the lots were permanent mobile home sites, 74 were camp sites and 81 were vacant.

At the time of the staff-assisted rate case approved by Order No. PSC-96-1262-W[U], issued October 8, 1996, in Docket No. 960145-WU, the utility was still providing water service to 26 permanent mobile home sites but only 56 camp sites and billing 25 vacant lots. The order required the utility to eliminate vacant lot billing and only charge where there was an active connection. Also, during the test year, two lots were condemned as a result of severe storm damage further reducing the utility's potential customer base. [Page 9] Finally, the order declined to approve Service Availability Charges due to the fact that the utility was built in 1969 and almost fully depreciated as well as the fact that it was losing service area each year due to severe flooding. As a consequence, the utility was not experiencing any growth. [Page 12]

Since that time, a number of additional storms have further reduced the utility's service area by about 1/4th due to designation as a flood zone by the Federal Emergency Management Agency (FEMA). According to the utility, FEMA required the permanent residents to move out of the flood zone and is only allowing recreation vehicles. FEMA has also begun restricting new septic systems in that zone. As a result, Mr. Peterson indicates there are now only 12 year-round units and 21 camp sites for 33 connections or 26.4 ERCs. The remainder of the territory is either vacant or is located in the FEMA-designated flood zone. Production records provided by the utility for the twelve-month period from June of 1998 through May of 1999 indicate an average daily water production of 2,537 gallons with an average maximum daily production of 4,631 gallons.

Based on the maps provided by the utility, there appear to be approximately 50 vacant lots outside of the FEMA-designated flood zone. Were it likely these sites would be developed as platted, system design would exceed the 40 ERC limitation in Rule 25-30.055, Florida Administrative Code, as the 33 current connections plus the 50 additional connections would equal 66.4 ERCs. However, as indicated in rate Order No. PSC-96-1262-W[U] and as attested to by the utility owner, development has been stagnant. Also, when lots are purchased as a year-round residence, generally more than one lot is acquired per connection and, in many instances, the owners are drilling their own wells. So, for the foreseeable future, it appears that distribution line connections will remain well under 40 ERCs or 10,000 gallons per day.

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For these reasons, the FDEP agreed to reclassify Holmes Creek from a community water system to a noncommunity water system. Basically what this means is that the number of customers served by the system is so small that the FDEP does not consider the customers a "community." The FDEP confines its noncommunity classification to systems which serve 15 or fewer service connections and 25 or fewer persons in excess of 60 days. The reason the classification is so strict is that environmental monitoring requirements for noncommunity water systems are relatively minimal. Such systems are not required to perform full chemical analysis, just a nitrate/nitrite sample once a year and bacteria sampling every three months instead of monthly. Also, there are no requirements for certified operators or for monthly operating reports. Since the FDEP's noncommunity classification is stricter than the Commission's small system exemption, (15 verses 40 connections, respectively) it appears to staff that this classification confirms the system line design limitation in Rule 25-30.055, Florida Administrative Code.

Staff has verified that the utility's Annual Reports and Regulatory Assessment Fees (RAFs) are current through 1998 and that there are no penalties, interest or refunds due. Staff believes it is not necessary to require Holmes Creek to complete an Annual Report for the portion of 1999 in which it was regulated by the Commission. Instead, the utility should file an affidavit certifying 1999 revenues up to date of the order issued in this docket, and remit the associated RAFs, within the time limits prescribed by Commission rules. The requirement for an affidavit of revenues in lieu of a full annual report is consistent with several recent Commission orders. See Order No. PSC-99-1383-FOF-SU, issued July 19, 1999, in Docket No. 990323-SU, and Order No. PSC-99-0639-FOF-WS, issued April 5, 1999, in Docket No. 981913-WS. The utility should also be required to return its original certificate for cancellation.

Pursuant to Section 2.07(C)(12), Administrative Procedures Manual, the Commission has authorized staff to administratively dispose of applications for cancellation of water and wastewater certificates which are filed and processed in accordance with Chapter 367 and where no protests have been filed. Staff believes that Holmes Creek has appropriately applied a small system exemption pursuant to Section 367.022(6), Florida Statutes, and Rule 25-30.055, Florida Administrative Code. Staff therefore recommends that an order be issued within 30 days canceling Certificate No. 538-W. Staff also recommends that the utility be required to submit an affidavit of revenues and remit 1999 RAFs up to the date of the order issued in this docket. Further, staff recommends the utility be required to return its original certificate for disposal within 30 days of the date of the order issued in this docket. Finally, staff recommends that Holmes Creek be required to inform the Commission within 30 days of any change in its operations such that an exemption from regulation would no longer apply. There being no other matters to dispose of in connection with the utility's request, staff recommends that the docket be closed upon issuance of the order.

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cc: Division of Water of Wastewater (McNulty)