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COMMISSION
CLERK

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

DATE: July 6, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Brady, Redemann, Romig) *pb rpr KKMLR JS*
Office of the General Counsel (Fleming) *KEY WCH*

RE: Docket No. 040793-SU – Application for grandfather certificate to operate wastewater utility in Okeechobee County by Zachary Taylor Camping and Lodge, Inc.
County: Okeechobee

AGENDA: 07/18/06 – Regular Agenda – Proposed Agency Action for Issue 2 -- Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Tew

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\040793.RCM.DOC

Case 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. The Commission acknowledged the resolution on June 15, 2004.¹ Pursuant to Section 367.171(2)(b), Florida

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.

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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.

According to the application, Zachary Taylor Camping and Lodge, Inc. (Zachary Taylor or utility) was established on February 23, 1978, to serve a 257 lot recreational vehicle park called Zachary Taylor Camping and Lodge (RV Park), which is also owned by Zachary Taylor, and an adjacent 88 unit condominium currently owned by the Taylor Creek Condominium Association (Taylor Creek). The lots in the RV Park are owned by Zachary Taylor which provides a variety of lease and overnight lodging options. All costs for wastewater service in the RV Park are included non-specifically in the leases and overnight lodging fees. As such, but for service to Taylor Creek, the utility would be exempt from regulation pursuant to Sections 367.022(4) and (5), Florida Administrative Code, which exempt public lodging establishments and landlords that do not receive specific compensation for service. The utility bills Taylor Creek a specific monthly flat rate for wastewater service.

The utility is located in a portion of the South Florida Water Management District which is considered a critical water supply problem area. Bulk water service is provided separately to Zachary Taylor and Taylor Creek by the Okeechobee Utility Authority (OUA). The lots in the RV Park have individual water meters which the utility reads and bills monthly at a rate which does not exceed the actual purchase price. Therefore, water service to the RV Park is exempt from Commission regulation pursuant to Section 367.022(8), Florida Statutes, which exempts entities that resell service at or below purchase price. The provision of water service to Taylor Creek is exempt from regulation pursuant to Section 367.022(7), Florida Statutes, which exempts condominiums providing service solely to members.

On July 28, 2004, Zachary Taylor filed an application for a certificate to provide wastewater service in Okeechobee County. The application was found to be deficient. By letter dated November 10, 2004, the utility requested an extension of time to complete deficiencies based on previous hurricanes and family medical emergencies. The utility completed the filing requirements on March 29, 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 the documentation necessary to determine whether revenues from Taylor Creek might be subsidizing service to the RV Park. The utility's 2004 annual report was late-filed on July 8, 2005, with supporting documentation filed on August 17, 2005. Due to the continuing health issues of the owner and his accountant, it took staff several months to obtain information sufficient to complete an analysis of the utility's current rates.

This recommendation addresses the application for a grandfather wastewater certificate and rates and charges. The Commission has jurisdiction pursuant to Sections 367.045, 367.081, and 367.171, Florida Statutes.

Discussion of Issues

Issue 1: Should Zachary Taylor Camping and Lodge, Inc.'s application for a grandfather certificate be approved?

Recommendation: Yes. The application should be approved and the utility should be issued Certificate No. 538-S, effective May 13, 2004, to serve the territory described in Attachment A. (Brady, Redemann, Romig, Fleming)

Staff Analysis: 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 for the territory served as well as system and territory maps. A description of the territory is appended to this memorandum as Attachment A. The application also contains a recorded warranty deed in the name of Zachary Taylor Camping and Lodge, Inc., as proof of ownership of the land upon which the wastewater treatment facilities are located.

The wastewater system consists of a 40,000 gallon per day extended air treatment system with disposal to two percolation ponds. According to the Florida Department of Environmental Protection, there are no enforcement actions or corrective orders against the system and the utility's operating permit was renewed in 2003.

The utility is current in filing its regulatory assessment fees (RAFs) and has filed its 2004 annual report. Although the utility has not yet filed its 2005 annual report, it has requested and has been granted an extension due to the extraordinary health circumstances of its accountant. Staff has also explained the need for the utility 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. As a result, Zachary Taylor has provided a statement that the books and records of the utility are in compliance with NARUC's USOA, including the ability to provide separate general ledgers for utility and non-utility records.

Based upon the above, staff recommends that Zachary Taylor Camping and Lodge, Inc.'s application should be approved and the utility should be issued Certificate No. 538-S to serve the territory described in Attachment A.

Issue 2: What are the appropriate rates and charges for Zachary Taylor Camping and Lodge, Inc.?

Recommendation: The current monthly general service flat rate of \$23.10 per unit for Taylor Creek should be continued. In addition, the utility should be authorized to charge \$23.10 for each lot and common facility in the RV Park. Any monthly charges for the RV Park not collected should be imputed. The utility should be required to charge this rate until authorized to change it by this Commission in a subsequent proceeding. The utility should also be required to provide a tariff reflecting the Commission approved rate within 30 days from the date of the Consummating Order. Pursuant to Rule 25-30.475(1), Florida Administrative Code, the effective date of the tariffs should be the stamped approval date. (Brady, Redemann)

Staff Analysis: 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 charge for wastewater service to Taylor Creek was established by contract and there has never been a specific charge for wastewater service to the RV Park. In addition, the utility has no service availability charges nor has it requested miscellaneous service charges. Taylor Creek consists of 88 condominium units. The RV Park consists of 257 lots and associated common facilities, including a pool with shower rooms, clubhouse, dockage, laundry, small store, and an office. Therefore, there are 351 wastewater connections.

Wastewater service within the RV Park is provided to four classes of customers, including perpetual members, full-time leases, part-time leases, and overnight lodgers. The cost of wastewater service is recovered nonspecifically in lot rent and overnight lodging fees. If the utility were only providing wastewater service to the RV Park, the service would be exempt from Commission regulation pursuant to Section 367.022(5), Florida Statutes, which exempts landlords providing service to their tenants without specific compensation for the service and Section 367.022(4), Florida Statutes, which exempts public lodging establishments. However, the utility is also providing wastewater service to Taylor Creek for specific compensation.

According to the application, the utility currently charges Taylor Creek a monthly general service rate of \$2,032.80 for wastewater service. This charge is based on \$23.10 per unit for each of the condominium's 88 units. Service to Taylor Creek is pursuant to a 50-year Sewage System Agreement (service agreement) which was entered into when the utility was first established in 1978, and has been subsequently assigned to Taylor Creek. The service agreement, most recently updated on November 5, 2002, includes provisions for an annual increase of 2.9%. Staff has explained to the utility that this provision is not authorized under Commission regulation. Instead, the utility was provided the information to apply for an annual price index pursuant to Section 367.081(4)(a), Florida Statutes.

For a grandfather certificate, the Commission generally approves the utility's existing rates and charges. However, because the County did not authorize the utility's rates and because there is a specific monthly charge for wastewater service to Taylor Creek, but not the RV Park, staff requested additional data to determine whether revenues from Taylor Creek were subsidizing the provision of wastewater service to the RV Park. Staff first analyzed water use data provided by the OUA. Based on the data, it appears that the Taylor Creek condo units use a similar amount of water on an average annual basis to the lots in the RV Park. Therefore, both

entities place a similar demand on the wastewater system. Staff then analyzed detailed operating costs and supporting documentation from the utility. While the utility reported higher than normal operating costs in 2004 due to hurricane damage, the utility's operating costs appeared to be reasonable and well in excess of the revenues that would be generated if the \$23.10 per unit collected from Taylor Creek were also collected from each lot and common facility in the RV Park. Therefore, it appears that \$23.10 is a reasonable monthly wastewater flat rate for both the condo units in Taylor Creek and the lots in the RV Park.

Therefore, staff recommends that the current monthly general service flat rate of \$23.10 per unit for Taylor Creek should be continued. In addition, staff recommends that the utility be authorized to charge \$23.10 per month for each lot and common facility in the RV Park. Any monthly charges for the RV Park not collected should be imputed. The utility should be required to charge this rate until authorized to change it by this Commission in a subsequent proceeding. The utility should also be required to provide a tariff reflecting the Commission approved rate within 30 days from the date of the Consummating Order. Pursuant to Rule 25-30.475(1), Florida Administrative Code, the effective date of the tariffs should be the stamped approval date.

Issue 3: Should this docket be closed?

Recommendation: No. If no timely protest is received to the proposed agency action issue on rates and charges, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending receipt of revised tariff sheets reflecting the Commission approved rate. Upon receipt and verification of the revised tariff sheets, the docket should be administratively closed. (Fleming)

Staff Analysis: If no timely protest is received to the proposed agency action issues on rates and charges, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending the receipt of an revised tariff sheets reflecting the Commission approved rate. Upon receipt and verification of the revised tariff sheets, the docket should be administratively closed.

Attachment A

Zachary Taylor Camping and Lodge, Inc.

Okeechobee County
Wastewater Service Area
Serving Zachary Taylor Camping and Lodge RV Park
and
Taylor Creek Condominium Association

Parcel 1 - Zachary Taylor Camping and Lodge

Township 37 South, Range 35 East
Section 35

Begin at the Northeast corner of Section 35, Township 37 South, Range 35 East. Thence West along the North line of said Section a distance of 520 feet to the Point of Beginning (POB). Thence continue West along the North line a distance of 420 feet to the East edge of Taylor Creek. Thence along the waters edge of Taylor Creek the following 5 courses to a Bridge used to cross State Road 15 (Conners Highway).

1. South 28° West a distance of 80 feet.
2. South 8° 30' West a distance of 270 feet.
3. South 2° West a distance of 280 feet
4. South 5° East a distance of 240 feet.
5. South 18° East a distance of 730 feet.

Thence North 75° East a distance of 200 feet along the North Right of Way line of State Road 15 (Conners Highway).

Thence North 9° West a distance of 300 feet.

Thence North 78° East a distance of 101 feet.

Thence North 8° West a distance of 60 feet.

Thence North 90° West a distance of 1,120 feet to the POB.

Parcel 2 - The Taylor Creek Condominium Association

Township 37 South, Range 35 East
Section 35

Begin at the Northeast corner of Section 35, Township 37 South, Range 35 East. Thence South along the East line of said section a distance of 1,770 feet to the Point of Beginning (POB). Thence South 89° West a distance of 150 feet.

Thence North 0° West a distance of 100 feet.

Thence South 82° West a distance of 280 feet along the South Right of Way line of State Road 15.

Thence South 0° West a distance of 20 feet.

Thence South 81° West a distance of 165 feet.

Thence South 15° East a distance of 700 feet.

Thence North 75° East a distance of 420 feet.

Thence North along the East line of said section a distance of 550 feet to the POB.