BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of DELTONA UTILITIES, a division of Deltona Utilities, Inc., for approval of proposed agreement with Deltona Hills Golf and Country Club for disposal of treated wastewater effluent and petition for limited proceedings in Volusia County.	DOCKET NO. 891263-SU ORDER NO. 22468 ISSUED: 1-24-90

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
BETTY EASLEY
GERALD L. GUNTER

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING APPLICATION FOR APPROVAL OF A SPECIAL AVAILABILITY AGREEMENT AND DENYING PETITION FOR A LIMITED PROCEEDING

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are 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.

CASE BACKGROUND

On December 23, 1983, Deltona Utilities, Inc. (Deltona or utility), submitted an application to the Department of Environmental Regulation (DER) for renewal of its wastewater operation permit. Subsequently, DER notified Deltona of its intent to deny the application based on the utility's failure to include in the application a proposal to cease discharging its effluent into Lake Monroe. Ultimately, a Consent Order was

entered into between DER and Deltona which required that the utility cease discharging effluent into Lake Monroe by November 1, 1988. This deadline has since been extended to November 1, 1990.

On October 23, 1986, the utility submitted an application to the St. Johns River Water Management District (WMD) for consumptive use permits for two new wells to be drilled within the utility's service area. The WMD issued a letter of intent to grant the requested consumptive use permits on July 22, 1987, however, as a condition of issuance, the utility was required to make arrangements to dispose of its treated effluent through irrigation of a golf course in the area.

The WMD also subsequently placed a condition on the consumptive use permit issued to the Deltona Hills Golf and Country Club (golf club), requiring that it accept treated effluent for its course when it became available from Deltona Utilities.

As a consequence of these DER and WMD mandates, the utility and the golf club entered into negotiations which culminated in an effluent disposal agreement between the parties.

EFFLUENT DISPOSAL AGREEMENT

The golf club's main obligations under the agreement are: (1) to provide a perpetual exclusive easement for the utility to discharge treated effluent into a holding pond on the golf club's property; (2) to install all on-site improvements except the on-site pump (to be installed by the utility); (3) to operate all on-site improvements at its expense; (4) to bear all expenses to modify the wastewater lines and irrigation facilities to accommodate the maximum amount of treated wastewater should the use of the property change from that of golf course to another use; and (5) to reimburse the utility for the cost of constructing and installing the on-site irrigation pump and to bear the utility's costs of delivering the effluent. The utility will be reimbursed through a monthly per gallon charge over a period not to exceed twenty years; however, this charge cannot exceed the golf club's current cost to pump its own water for irrigation, and the golf club shall not pay for any quantity of effluent greater than 425,000 gallons per day per year for each year of the twenty year period.

The utility's primary obligations under the agreement are to construct all off-site facilities and an on-site holding pond and to initially pay the cost (estimated at $75,000) to construct and install the on-site irrigation pump.

REQUESTED RELIEF

On November 3, 1989, the utility filed a petition with the Commission requesting that we take one (1) of four (4) actions discussed below, with regard to the agreement, or alternatively, that a limited proceeding be initiated so that the Commission could further consider the matter.

First, the utility proposed that the Commission enter an Order approving the contract between the utility and the golf club as a special service availability agreement. Rule 25-30.510 et seq., Florida Administrative Code, outlines Commission policy as it relates to service availability charges. Basically, Commission policy favors a service availability policy which attempts to place the burden or costs in providing utility service on the customers receiving the benefit of such service. Under the subject agreement, the golf club is neither connecting to the utility's systems or otherwise burdening the utility's systems capacity. Therefore, we do not believe the subject agreement falls within the definition of a service availability agreement as defined by the above-cited rule. The agreement is merely an arms-length contract between the utility and the golf club. The only time we might review such contracts is perhaps in a rate case proceeding where all costs or expenses incurred by a utility are reviewed for reasonableness and prudency. Accordingly, we find that the utility's request for approval of the effluent disposal agreement as a special service availability agreement should be denied.

Second, the utility proposed that the Commission enter an Order approving a new class of service for effluent disposal delivery subject to the terms and conditions of the agreement. We believe it is inappropriate to establish a new class of service for effluent disposal delivery in this particular case for several reasons. First, establishing a new class of service may send false signals that the utility is ready and able to satisfy demand for treated effluent. In reality, Deltona is not offering the effluent as a service for which there is an

impending demand. Rather, the utility is securing an alternative method of disposing of its effluent as mandated by the DER and WMD. Second, if a new class of service is established, we believe that a rate should be established at the same time. This is the course of action chosen by the Commission in two previous cases, i.e., the Marco Island rate case (Dockets Nos. 850151-WS and 870743-SU) and the St. Augustine Shores rate case (Docket No. 870980-WS). However, our rationale for approving a new rate and rate class in both those cases are clearly distinguishable from the present case. In the former case, Marco Island had long standing agreements to provide effluent for the irrigation of two golf courses, one of which was an affiliate of the utility. In addition, because of limited water resources on Marco Island, the utility had received inquiries from other customers regarding its provision of effluent for spray irrigation. Given those factors, we determined that there was a need for a tariffed rate and a new rate class for the treated effluent disposal service. In the St. Augustine Shores case, the utility had been providing effluent for spray irrigation to an affiliated golf course at no charge. The record indicated that both the utility and the golf course were benefited by the arrangement. The utility needed the golf course to dispose of its effluent, and it was unclear whether the golf course had a viable alternative source of irrigation. Thus, we decided that it was appropriate that the golf course and the utility's ratepayers share in the costs associated with providing the service. Therefore, we established a rate and a new rate class for such service. Third, and finally, we believe that it is important to observe that in the above two instances where we have established a class of service for effluent disposal delivery, both decisions were made in a rate case setting where we had sufficient information before us to determine the prudence and reasonableness of the utility's request to establish a new class of service. In the instant case, no such information has been provided. Accordingly, we find that the utility's request to establish a new class of service should be denied.

Third, the utility proposed that the Commission enter an Order recognizing that the utility's expenses which might otherwise be includable in rate base will not be disallowed simply because such expenses were incurred under the subject agreement between the utility and the golf club. We believe that the following quote from our Order No. 21449, issued June 26, 1989, properly addresses the utility's concerns in this regard:

> . . . based on the benefits of the proposed spray irrigation system and the support that both DER and the WMD have expressed for the system, it is appropriate for the utility to dispose of effluent to the Deltona Hills Golf and Country Club by means of spray irrigation. Therefore, we find it appropriate to conceptually treat as a rate base component the utility's investment in wastewater disposal facilities to transport effluent meeting DER standards to the Deltona Hills Golf and Country Club under the specific circumstances proposed. Although this method of disposal will cost more than disposal by means of percolation ponds, we believe that the benefits to be realized by residents in that area in the long run make the spray irrigation system a reasonable option on Deltona's part. The utility did not request a rate increase and we find that the utility's next rate case will be the most appropriate time to consider the revenue impact of this decision . . .

We believe that our above decision clearly shows that the Commission would not disallow the utility's reasonable and prudent costs simply because they were incurred under the terms of an agreement. However, the most appropriate time to consider this matter is in a rate case proceeding where we have the necessary information available to us to determine the reasonableness and prudence of such costs. Accordingly, we find that the utility's request for us to issue an Order re-stating our policy in this regard should be denied.

Fourth, and finally, the utility proposed that the Commission grant such other relief as it deemed appropriate. Given the foregoing discussions, we believe that no other relief is necessary or appropriate at this time.

As mentioned above, the utility's petition also requested as an alternative, that a limited proceeding be initiated so that the matter may be further considered by the Commission. We find that we have adequately considered the points raised in the utility's petition and no such limited proceeding is necessary.

CONCLUSION

Upon due consideration of the foregoing, we find that the utility's petition for our approval of a contract between the utility and the golf club as a special service availability agreement, or alternatively, a petition for a limited proceeding should be denied.

It is, therefore

ORDERED by the Florida Public Service Commission that the petition by Deltona Utilities, a division of Deltona Utilities, Inc., for approval of a special service availability agreement between Deltona Utilities and Deltona Hills Golf and Country Club, or in the alternative, to initiate a limited proceeding, is hereby denied. It is further

ORDERED that the provisions of this Order are issued as a proposed agency action, and as such, shall become final and effective unless an appropriate petition in the form provided by Rule 25-22.36, Florida Administrative Code, is rece ved by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that if no timely protest is received to this proposed agency action, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 24th day of JANUARY, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

JRF

by: Kay Flynn
Chief, Bureau of Records

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on February 14, 1990.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent 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.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.