

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Rookery Bay)	DOCKET NO. 891252-SU
Utility Company for amendment of)	ORDER NO. 22967
Certificate No. 383-S in Collier Co.)	ISSUED: 5-22-90
)	

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING AMENDMENT OF CERTIFICATEAND

NOTICE OF PROPOSED AGENCY ACTION
ORDER SETTING RATES AND CHARGES AND
REQUIRING CORPORATE UNDERTAKING

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission that the action discussed herein is final except for the establishment of rate base and setting rates and charges, which are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On October 27, 1989, Rookery Bay Utility Company (Rookery Bay or Utility) filed an application with this Commission for amendment of Certificate No. 383-S to include additional territory in Collier County, pursuant to Section 367.045, Florida Statutes, and Rule 25-30.045, Florida Administrative Code. The territory requested includes Six L's Farm. Rookery Bay currently serves approximately 10 sewer customers, some of which are large mobile home parks. Water is provided by Collier County Utilities. Rookery Bay serves the rural areas of Collier County, and is wholly-owned by Mr. Jim F. Spade.

The Utility has no established rates which can be charged to the customers affected by this amendment. The Utility is inappropriately attempting to set rates through a developer agreement. We will open a separate docket to determine the appropriate rates and charges for this system upon receipt of the filing by the Utility of a new class of service.

DOCUMENT NUMBER-DATE

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Application

The application is in compliance with Section 367.045, Florida Statutes, and other statutes and administrative rules concerning an application for an amendment of certificate. In particular, the notarized application contains:

1. A filing fee in the amount of \$150, as prescribed by Rule 25-30.020, Florida Administrative Code.
2. Adequate service territory and system maps and a territory description, as prescribed by Rule 25-30.035(h) and (i), Florida Administrative Code. Said territory to be served in Collier County is described in Attachment A.
3. Proof of notice to all interested governmental and regulatory agencies, and all utilities within a four-mile radius of the territory to be served, and proof of advertisement in a newspaper of general circulation in the county, as prescribed by Rule 25-30.030, Florida Administrative Code.
4. Evidence that the Utility owns the land on which the Utility's facilities are located as required by Rule 25-30.035(3)(f), Florida Administrative Code.

Rookery Bay has been in operation since 1972 and under the jurisdiction of the Florida Public Service Commission since April 16, 1985, when we obtained jurisdiction in the county. The Utility has been providing satisfactory service to its customers. The Department of Environmental Regulation currently has no outstanding Notice of Violations or corrective orders against the Utility. Therefore, the Utility has demonstrated that it has the technical and financial ability to provide service to the additional territory being requested. There was one objection to Rookery Bay serving this territory, but it has been withdrawn.

Based on the above information, we find that it is in the public interest to amend Certificate No. 383-S, held by Rookery Bay, to include the territory described in Attachment A to this Order.

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The Utility is directed to file revised tariff sheets reflecting the additional territory within 30 days of the date of this Order. Further, Certificate No. 383-S shall be returned to this Commission within 30 days of the date of this Order for entry reflecting the additional territory shown on Attachment A.

Show Cause

As mentioned previously, the Utility filed its application on October 27, 1989, the developer agreement on November 21, 1989, and began serving the area on December 21, 1989. Technically, the Utility is in violation of Sections 367.045(2) and 367.081(1), Florida Statutes, for serving outside its certificated territory without Commission approval and for charging rates which have not been approved by this Commission. The Utility has been advised of these violations and has agreed to comply with the statutes and Commission rules in the future. However, the Utility is hereby put on notice that if, in the future, it serves outside its certificated territory it may be fined for violation of Florida Statutes.

Rates and Charges

When the Commission obtained jurisdiction over Rookery Bay, all existing rates were grandfathered. The Utility has never had a full rate proceeding. As a result, the Utility has incorrectly adopted the method of setting rates through individual developer agreements and then having those rates added to a list on the tariff rate sheet.

On November 21, 1989, the Utility filed a developer's agreement for Six L's Farm, which was closely followed by two more agreements for Imperial Wilderness, Inc. and Rookery Bay Ltd. - Wentworth Development Corporation. We are unable to properly evaluate these agreements because Rookery Bay has continuously set rates through each separate developer's agreement. Further, the Utility has never filed a service availability policy.

The Utility was informed of these concerns regarding its method of setting rates in a letter from Commission Staff dated January 8, 1990. At that time, cost justification was

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requested for the proposed rates in all three of the developer agreements, as well as the rationale behind the non-uniform application of the "plant capacity" charge. Rookery Bay was also advised that it must file a service availability policy.

The Utility responded on March 29, 1990, stating that it would refile all three developer agreements in the form of a new class of service and file a service availability policy. However, the Utility's position is that since our notice came after the thirty day deadline for the Six L's Farm developer's agreement, it has the right to charge the requested rate. The Utility has, in fact, been providing service and charging that rate since December 21, 1989. Rates have also been charged for Imperial Wilderness since October 1, 1989. Wentworth Development is not in operation at this time. The Utility does not have an existing service availability policy; therefore, the developer's agreement is akin to a special service availability contract, which must be approved by the Commission prior to becoming effective, in accordance with Rule 25-30.550(2), Florida Administrative Code.

A developer's agreement, as defined in Rule 25-30.515(6), Florida Administrative Code, is "a written agreement setting forth, in detail, the terms and conditions under which a utility will render service to a developer's property." The rates in the agreement must be consistent with the approved rates in the tariff. Therefore, the Utility's method of setting rates through developers' agreements is inappropriate.

It is our understanding that the Utility is preparing the new class of service filing and a service availability policy. Since the Utility is making an effort to comply, we will not institute show cause proceedings at this time. Rather, we find it appropriate to approve the rates set forth in the Six L's Farm Developer's Agreement in this instance. However, since the new class of service has not yet been filed, we believe the revenues obtained shall be held subject to refund pending the filing of a new class of service. The funds will be protected by a corporate undertaking. This will ensure that the collection of revenues match the rate approved with the new class of service filing. In addition, the Utility is directed to file a service availability policy, which will be the basis for evaluating future developer agreements.

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On February 27, 1990, the Utility was advised that the tariff filing is due no later than May 1, 1990, or we may initiate show cause proceedings for violation of its tariff. This matter will be considered in the new docket to be opened upon receipt of the tariff filing.

The Imperial Wilderness Developer's Agreement is addressed in Docket No. 891264-WS. We have advised the Utility that the Imperial Wilderness Developer's Agreement will be handled in the same manner as Six L's Farms. With reference to the Wentworth Development, the Utility shall charge for service no earlier than ten days prior to filing the new class of service with this Commission, as permitted by Section 367.091(4), Florida Statutes.

Corporate Undertaking

Pursuant to Section 367.082, Florida Statutes, the excess of interim rates over the previously authorized rates shall be collected subject to refund with interest. Since no rates have been previously authorized, the corporate undertaking is based upon an estimate of the total revenue.

We have determined that a corporate undertaking by Rookery Bay Utility Corporation would be sufficient to protect potential refunds, including revenues inappropriately collected from December 21, 1989 to the present. Therefore, the Utility shall provide a corporate undertaking in the amount of \$15,600. Should any refund ultimately be required, it shall be paid with interest calculated pursuant to Rule 25-30.360(4), Florida Administrative Code.

Rookery Bay must keep an accurate account of all monies received, specifying by whom and on whose behalf such amounts were paid. The Utility shall provide a report by the twentieth day of each month indicating the monthly and total revenue collected subject to refund, pursuant to Rule 25-30.360(6), Florida Administrative Code.

It is, therefore,

ORDERED by the Florida Public Service Commission that the amendment of Certificate No. 383-S, held by Rookery Bay Utility Company, 5610 Cynthia Way, Post Office Box 1276, Naples, Florida 33939-1276, is hereby approved. It is further

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ORDERED that Rookery Bay shall return Certificate No. 383-S to this Commission within 30 days of the date of this Order for appropriate entry. It is further

ORDERED that the rates set forth in the Six L's Farm Developer's Agreement are approved, subject to refund, as set forth in the body of this Order. It is further

ORDERED that Rookery Bay shall provide a corporate undertaking in the amount of \$15,000 as discussed in the body of this Order. Rookery Bay shall file a report by the twentieth day of each month indicating the monthly and total revenue collected subject to refund. It is further

ORDERED that Rookery Bay shall file a new class of service agreement. It is further

ORDERED that Rookery Bay shall file a service availability policy. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition in the form provided by Rule 25-22.36, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event that this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission,
this 22nd day of MAY, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ALC

by: Kay Flynn
Chief, Bureau of Records

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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.

As identified in the body of this order, our action setting rates and charges and requiring corporate undertaking 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 June 12, 1990. In the absence of such a petition, this order shall become effective on the date 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 the relevant portion of 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,

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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.

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 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 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.

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ATTACHMENT A

DESCRIPTION FOR ROOKERY BAY UTILITY COMPANY

COLLIER COUNTY

SERVICE TERRITORY DESCRIPTION (Six L's Farm Migrant Labor Camp)

Township 51 South, Range 27 East

In Section 8

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