

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Rainbow Springs Ltd., For A Declaratory Statement) DOCKET NO. 931148-WS
) ORDER NO. PSC-94-0657-DS-WS
) ISSUED: May 31, 1994
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING

**ORDER DENYING IN PART AND GRANTING IN PART PETITION
FOR DECLARATORY STATEMENT**

BY THE COMMISSION:

BACKGROUND

By petition filed November 29, 1993, Rainbow Springs, Ltd. has petitioned for a declaratory statement which responds to two specific questions posed by the petitioner:

1. Whether Rainbow Springs, Ltd., may charge a "water and sewer readiness to serve charge" pursuant to its land sales agreements.
2. Whether the activity by Rainbow Springs, Ltd., of charging and collecting a monthly "readiness to serve charge" in land sales agreements is an activity under the jurisdiction of the Florida Public Service Commission.

Rainbow Springs, Ltd. (RSL), a developer, is the stock holder of Rainbow Springs Utilities, Inc. (RSUI). RSUI provides water and wastewater services to the development which consists of approximately 500 residential connections. RSL maintains and repairs the non-used and useful water distribution system and the wastewater collection system. The non-used and useful systems are transferred to RSUI as they become used and useful in the service territory. There are some similarities between the charges of RSL, the subject of this recommendation for a declaratory statement, and charges, in the case of Palm Coast Utility Corporation (Palm Coast), by International Telephone and Telegraph's ITT Community Development Corporation (ICDC) and the Admiral Corporation. Order No. 18265, p. 23-4. In both cases, the charges are listed in the public offering statements and associated sales agreements. In the case of Palm Coast, an agreement exists with ICDC and the Admiral

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Corporation such that annual guaranteed revenues are received by Palm Coast based upon a formula. In the case of RSL, no agreement exists with RSUI and no such guaranteed revenues flow, nor are they ever intended to flow, to the utility.

The petition cites a letter from the Commission's Director of Water and Wastewater stating that, in assessing "readiness to serve" charges, Rainbow Springs, Ltd. (RSL) is "acting like a utility" and therefore should be certificated, tariff the charge or cease from assessing the charge. (Petition, p. 2)

For its part, RSL acknowledges, petition, p. 4, that although there are numerous Florida land developers involved in installment land sales, no other is known to petitioner to designate a "water and sewer readiness to serve charge".

Regardless of what it is called, however, RSL argues that this is a development charge rather than a utility charge. RSL notes, in this connection that

none of these monies [i.e., readiness to serve charges] have ever been conveyed to Rainbow Springs Utilities.

Petition, p. 9.

This differentiates the instant facts from those in Placid Lakes Utilities, Inc., Docket No. 920118-WU, wherein we ordered the utility to show cause why it should not be fined for allowing its parent company, Lake Placid Holding Company, to collect unauthorized service availability charges.

It should also be noted that there is no doubt whatever that service availability charges imposed by a regulated utility, such as Rainbow Springs Utilities, are regulated by this Commission. §367.101. These charges are indistinguishable from contributions-in-aid-of-construction. Florida Waterworks Assoc. v. FPSC, 473 So.2d 237 (1st DCA 1985).

Therefore, the transfer of facilities from a developer such as Rainbow Springs, Ltd. to a utility such as Rainbow Springs Utilities would be scrutinized by us for the purpose of setting rates. §367.081(2)(a); 367.021(3), F.S. In this situation, that scrutiny would not assume approval of the "readiness to serve" charge by this Commission.

DISCUSSION

We address first the question of whether a declaratory statement should be issued to the effect that Rainbow Springs, Ltd. may charge a "water and sewer readiness to serve charge" pursuant to its land sales agreements.

Because we agree with RSL's argument that the charge is a development charge collected by a non-utility, rather than a utility charge, the petition for the requested statement must be denied. RSL itself states that it is "a residential community developer regulated by the State of Florida, Department of Business Regulation, Division of Land Sales, Condominiums and Mobile Homes (DBR) pursuant to Chapter 498, Florida Statutes". Petition, p. 5. Clearly, that agency, charged with enforcing rules promulgated pursuant to Chapter 498, is the proper agency to respond to petitioner's first question. That would be the case even if the name chosen for the charge were calculated to, or had the effect of, misleading purchasers. See, e.g., Deltona Corporation v. Mayo, 342 So.2d 510 (Fla. 1977). The petition is therefore denied because the DBR is the proper agency to determine whether RSL may impose this charge under Chapter 498, F.S.

We next consider whether a declaratory statement should be issued to the effect that the activity of Rainbow Springs, Ltd. of charging and collecting a monthly "readiness to serve charge" in land sales agreements does not subject Rainbow Springs, Ltd. to our jurisdiction under the stated facts.

We grant the petition as to this statement

Admittedly, RSL, perhaps alone among installment land sales developers, has chosen a title for its charges which denotes its origin as a utility charge once imposed by Rainbow Springs Utilities until disallowed by this Commission in Docket No. 810352-WS. Petition, p. 11, ¶3. When that title, so confusingly similar to the "service availability charge" of utilities which we regulate, §367.101 F.S., is combined with the monthly nature of RSL's installment land contracts, the increased potential for confusion is apparent and perhaps one that either RSL itself¹ or the Department of Business Regulation should note in its regulation of RSL under Chapter 498, F.S. However, that circumstance does not

¹ RSL has responded to our concerns about customer confusion by adding ¶(d) to pg. 5 of its land sales offer (attached) and deleting any reference to unregulated charges in other sections of its land sales offer dealing with regulated charges.

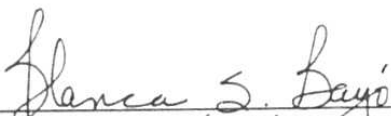
subject RSL, which is not a utility, to Commission jurisdiction over its development charges. As previously noted, the transfer by RSL of any facilities it develops to Rainbow Springs Utilities is subject to Commission scrutiny and that scrutiny does not assume our approval of this charge. Moreover, issuance of this statement is predicated on the facts presented, including the representation that none of the charges collected by RSL are given to Rainbow Springs Utility. Were the case otherwise, we would have analyzed these facts as similar to Placid Lakes, supra.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Petition For Declaratory Statement of Rainbow Springs, Ltd. is denied in part and granted in part. It is further

ORDERED that this docket be closed.

BY ORDER of the Florida Public Service Commission this 31st day of May, 1994.



BLANCA S. BAYO, Director
Division of Records and Reporting

(S E A L)

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.

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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 Civil 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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PART VI

ADDITIONAL INFORMATION:

- (a) Every Purchaser shall automatically be a member of the Rainbow Springs Property Owners' Association, Inc., a non-profit corporation organized to provide for maintenance, preservation, and architectural control of the subdivision, and to promote the health, safety and welfare of the residents.
- (b) Developer makes no representations as to the uses to which other land in the vicinity will be put, reserving the right to develop adjacent lands not offered under this Public Offering Statement as Developer sees fit, in accordance with law.
- (c) Legal description of lots being offered for sale under this Public Offering: Lots within Rainbow Springs Country Club Estates (Phase 22) Section 13, Township 16 South, Range 18 East, Marion County, Florida, Lots 1 and 19, Block H, Lots 8 and 11, Block J, Lots 1, 4 thru 6, 11 and 14, Block K, Lots 3, 14, 15, 32, 37-40, 44, 45 and 56, Block L, Lots 1, 8 and 10, Block M, Lots 10, 24 and 25, Block N, Lots 11, 12, 14 thru 16, 18 and 19, Block P, Lots 7, 9, 12, 16, 21 and 25, Block Q, Lots 7, 9 and 11, Block R, all in Rainbow Springs Country Club Estates, as recorded in Plat Book S, pages 106 thru 116, public records of Marion County, Florida. Lots within Rainbow Springs Fifth Replat (Phases 23 and 24) Sections 13 and 14, Township 16 South, Range 18 East, and Sections 18 and 30, Township 16 South, Range 19 East, Marion County, Florida, Lots 1 thru 49, Block 151, Lots 1 thru 17, Block 152, Lots 1 thru 17, Block 153, Lots 1 thru 6, 8, 9, 10 thru 16, Block 154, Lots 5, 6, 7, 13, 18, 30, 32, 33, 35 and 36, Block 155, Lots 12, 15, 17 and 20, Block 156, Lots 2 thru 4, 8, 9, 13 thru 16, Block 157, Lots 1 thru 12, 17, 19 thru 22, 24, 25 thru 28, Block 158, Lots 3, 6, 20, 24, 25, 28, 29, 35 and 37, Block 159, Lots 1 and 13, Block 160, Lots 4, 8, 9, 11, 12, 25, 26, 34, 36, 42, 45, 48, 54, 62, 63 and 66, Block 161, Lots 2, 5, 8, 10, 14 thru 17, 20, 21 and 25, Block 162, Lots 8 and 12, Block 163, Lots 1, 2, 5, 9, 10, 12, 13, 15 thru 21 and 24 thru 26, Block 164, Lots 1 thru 11, 14, 15, 17, 18, 20 thru 25, 27 thru 34 and 37, Block 165, Lots 1 thru 7, 9 thru 12, 14, 15, 19, 21, 24 and 25, Block 166, Lots 2, 6, 10, 23, 24, 26 thru 28, 30, 32 thru 61, 64 thru 70, 73 thru 76, 80 thru 82, 84, 88 thru 133, 137 and 138, Block 167, Lots 4 thru 6, 9, 12, 13, 17, 21, 22, 24 thru 28, 30 thru 34, 36 thru 39, 41 thru 44, 46, 48 thru 50, 52, 54, 55 and 57, Block 168, Lots 5, 9, 12, 15, 16, 18 thru 20, 22 and 26, Block 169, Lots 1 thru 27 and 27, Block 170, Lots 1, 4, 7 thru 33, 35, 36 and 38 thru 45, Block 171, Lots 3 thru 9 and 11 thru 13, Block 172, Lots 3, 10 and 12 thru 14, Block 173, Lots 3, 5, 6 and 9 thru 11, Block 174, Lots 1 thru 4, 8 thru 10, 12, 13, 15 thru 25 and 27 thru 34, Block 175, Lots 1 thru 5, 8 thru 19, Block 176, Lots 1, 3, 4, 7 thru 12, 14 and 16 thru 22, Block 177, Lots 1 thru 18, 21 thru 29 and 31, Block 178, Lots 1 thru 21, 23, 30, 31, 39 and 43 thru 46, Block 179, Lots 1 thru 12, Block 180, Lots 1 thru 16, Block 181 and Lots 4, 7 and 18, Block 182, Lots 1, 3, 4 and 6 thru 9, Block 183, Lots 2, 7, 8, 16, 22, 25, 27 and 31, Block 184, all in Rainbow Springs Fifth Replat as recorded in Plat Book T, pages 46 thru 59, public records of Marion County, Florida.
- (d) The Developer has constructed certain facilities which it still owns and maintains. The Developer has established a \$13.00 per month maintenance charge, not subject to approval by the Florida Public Service Commission, for these facilities, which is payable until a home is built and is served by water and sewer utilities. The charge commences at the time of purchase and continues until such time as a home is constructed and served by Rainbow Springs Utilities, Inc., which is regulated by the Florida Public Service Commission.