

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for exemption from Florida Public Service Commission regulation for a water treatment plant in Osceola County by the WILDERNESS HOME OWNERS ASSOCIATION, INC.)	DOCKET NO. 900400-WU
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In Re: Investigation, initiated pursuant to Order No. 22166, into appropriate billing for customers in Wilderness Development area of POINCIANA UTILITIES, INC. in Osceola County.)	DOCKET NO. 900217-WS ORDER NO. PSC-94-1174-AS-WS ISSUED: September 26, 1994

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING STIPULATION, CLOSING DOCKETS,
AND REQUIRING THE WILDERNESS HOMEOWNER'S ASSOCIATION, INC.
TO FILE AN APPLICATION FOR EXEMPTION WITHIN 30 DAYS

BY THE COMMISSION:

BACKGROUND

Poinciana Utilities, Inc. (Poinciana or PUI) is a Class A utility which currently provides water and wastewater service to approximately 4,100 water and 3,900 wastewater customers in Poinciana, Florida. During Poinciana's 1988 rate proceeding (Docket No. 881503-WS), a dispute arose between Poinciana and the developer of a subdivision known as the Wilderness, over the central plant located in Phase I, and the lines in Phase II. The dispute centered on the ownership of the plant and which party had the right to bill which phases of the development.

In 1986 Poinciana entered into an agreement with the Wilderness developer. Pursuant to the agreement, the developer would construct the water plant and lines for the three phases of

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the development and donate those facilities to Poinciana. Poinciana would then provide service to the entire development from its Wilderness plant. Pursuant to the agreement, the Phase I lines were transferred to Poinciana. However, neither the plant nor Phase II and Phase III lines were completed prior to the effective date of the 1986 Tax Reform Act. Neither party would agree to assume the income tax liability associated with conveyance of the plant and lines. In July of 1988, the Wilderness developer conveyed by quit-claim deed the central plant, the land the plant is located on, and the lines in Phase II to the Wilderness Home Owners Association (Association). On March 21, 1989, Poinciana filed a complaint against the developer in the Circuit Court of the Ninth Judicial Circuit, in and for Osceola County, Florida, Case No. 89-704.

From evidence presented at the rate case hearing it became apparent that this standoff and resulting litigation caused confusion as well as a billing problem within the Wilderness. During that test year, Poinciana billed the customers in Phase I at the full rate. These customers apparently received line maintenance service. Consequently, by Order No. 22166, we directed that a separate investigation docket be opened to determine who rendered what services to whom and to determine the appropriate rate for such partial service. The investigation docket was opened shortly thereafter and was assigned Docket No. 900217-WS. Pursuant to Order No. 22166, Poinciana would escrow all funds collected from the Wilderness Development pending the outcome of the investigation docket. The Commission was not a party to the escrow agreement.

On May 3, 1990, the Association requested exemption from Florida Public Service Commission regulation for the water treatment plant located in the development pursuant to Section 367.022(7), Florida Statutes. Docket No. 900400-WU was opened to process the Association's request. On May 24, 1990, Poinciana filed a motion to intervene in the exemption docket and to consolidate the exemption and investigation dockets. On September 11, 1990, we issued Order No. 23464, granting the motion to intervene but denying the motion to consolidate. Additionally, we determined that neither the exemption nor investigation docket could be completed pending a decision by the court as to ownership of the disputed property. Therefore, both dockets were placed in monitor status.

On March 18, 1994, Poinciana and the Association filed a Joint Motion To Approve Settlement Agreement with the Commission. The parties intend to resolve all litigation and Public Service Commission administrative action through approval of this agreement. Specifically, the agreement resolves ownership of the

Wilderness water treatment plant and underlying land and disperses the escrow account held by PUI. Pursuant to the Agreement, the Association will convey the water plant and land to PUI. PUI will turn over to the Association \$49,000 plus cost of service through January 1, 1994, from funds held in the escrow account, equalling \$51,571.14. The Association will also be reimbursed for electric power expenses. Any remaining funds in the escrow account will be released to PUI.

These actions will result in PUI owning and operating the treatment plant as contemplated in the original developer agreement. PUI will bill the individual customers in Phase I of Wilderness where it owns the water lines and provide bulk service to Phases II and III where Wilderness will retain ownership of the lines. In its Joint Motion, the parties stated that the Wilderness Homeowners Association will withdraw its request for exemption in Docket No. 900400-WU, and request that the Commission approve the settlement and close Docket No. 900217-WS.

On August 8 and August 17, 1994, the parties provided further information about the terms of settlement. Because the operator of the plant notified the parties that he would no longer operate the plant, PUI actually began operating the plant on January 1, 1994. As of that date, the Association has not paid any costs of water service except for power expenses. Once PUI assumes ownership of the plant, the Association will be reimbursed for all electric power costs. The total settlement amount that the Association will receive is \$51,571.14, plus power costs. Any remaining funds in the escrow account will be released to PUI.

After our review of the terms of the Settlement Agreement and the subsequent information provided by the parties, we find it appropriate to grant the joint motion and approve the Settlement Agreement. The stipulation fully resolves the dispute between the parties and addresses the concerns indicated in Order No. 22166. A copy of the Joint Motion and Settlement Agreement is appended to this order as Attachment A is hereby incorporated by reference.

The scope of the Docket No. 900217-WS was to determine which party should properly provide service to which phase and at what rate. The resolution of this issue depended upon a determination of legal ownership of the treatment plant. Because our approval of the Settlement Agreement resolves this issue and properly releases the escrow account wherein funds were held pending finalization of this docket, we find it appropriate to close Docket No. 900217-WS.

We also find it appropriate to close Docket No. 900400-WU, which concerned the pending exemption request. Because the request

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was filed in 1990 by a prior president of the Association and was based upon a billing scenario which has now been replaced by the current agreement, Docket No. 900400-WU shall be closed. The Association shall file a new exemption request within 30 days of the date of this Order.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the terms of the Settlement Agreement and supplemental information provided by the parties, the Joint Motion to Approve Settlement Agreement is hereby granted. The Settlement Agreement is appended hereto as Attachment A, and is incorporated by reference herein, It is further

ORDERED that Docket No. 900217-WS and 900400-WU are hereby closed. It is further

ORDERED that the Wilderness Homeowners Association, Inc., shall file a request for exemption within 30 days of the date of this Order.

By ORDER of the Florida Public Service Commission, this 26th day of September, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

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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.

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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from)	Docket No. 900400-WU
Florida Public Service regulation for)	
a wastewater treatment plant in Osceola)	
County by the Wilderness Home Owners)	
<u>Association, Inc.</u>)	
In re: Investigation initiated pursuant)	Docket No. 900217-WS
to Order 22166, into appropriate billing)	
for customers in Wilderness Development)	
Area of Poinciana Utilities, Inc. in)	
<u>Osceola County.</u>)	

JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT

Comes now the parties to PSC Docket Nos. 900217-WS and No. 900400-WU, and hereby request that the Commission approve their February 14, 1994 Settlement Agreement relating to Circuit Court Case 89-704, for the Ninth Judicial Circuit in and for Osceola County, (hereinafter "Settlement Agreement") copy attached hereto as Exhibit "A" and states:

1. Docket Nos. 900217-WS and 900400-WU were placed on monitor status pending resolution of Circuit Court Case 89-704 involving the parties.

2. The Settlement Agreement states in part:

4. This Agreement is contingent upon approval of its terms by the Florida Public Service Commission.

5. The Association and PUI have previously stipulated to a continuance of the Circuit Court case to permit the aforementioned inspection and the process of approval of this Agreement by the Public Service Commission.

3. Upon approval of this Settlement Agreement by the Public Service Commission, the Wilderness Home Owners Association will withdraw its request for exemption in PSC Docket No. 900400-WU.

4. The parties request that the Public Service Commission approve the Settlement Agreement and close Docket No. 900217-WS.

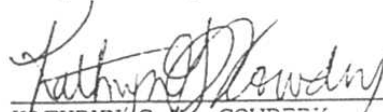
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Respectfully submitted,



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Attorneys for
Poinciana Utilities Inc.
DATED: March 1, 1994

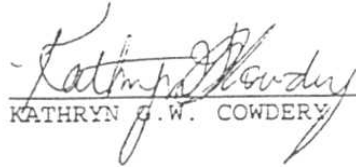


ROBERT S. HAYES
Attorney at Law
441 West Vine Street
Kissimmee, FL 34741
Attorney for Wilderness Homeowners
Association
DATED: March 16 1994

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Mr. Robert S. Hayes, Esq., 441 West Vine Street, Kissimmee, Florida 34741, on this 18th day of ~~February~~, 1994. *March*


KATHRYN G.W. COWDERY

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into this 14th day of ~~January~~ ^{February}, 1994, between POINCIANA UTILITIES INC. ("PUI") and THE WILDERNESS HOMEOWNERS ASSOCIATION INC. ("the Association") to resolve certain controversies regarding the ownership and operation of the water plant in the Wilderness Subdivision and to settle all pending litigation and administrative action involving the Association and PUI.

WHEREAS, the Association is the current record owner of the water plant in the Wilderness Subdivision; and

WHEREAS, PUI has filed suit in Case No. 89-704 in the Circuit Court of the Ninth Judicial Circuit in and for Osceola County, Florida, claiming the right of ownership in the plant; and

WHEREAS, PUI has escrowed certain funds, pursuant to Order of the Public Service Commission, which it has collected for the sale of water in the Wilderness Subdivision over the last several years; and

WHEREAS, the Association and PUI are involved in an administrative action (Case No. 94-2317-WS) regarding the proper distribution of the funds held in escrow by PUI; and

WHEREAS, the parties desire to resolve all litigation and administrative action between them,

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the parties agree as follows:

1. The Association will receive Forty-nine Thousand and 00/100 Dollars (\$49,000.00) from the escrow fund, plus any additional revenue collected by PUI for water service in the Wilderness Subdivision, up until the time that PUI assumes responsibility for operating the water plant.

2. The Association will convey all right, title and interest in the water plant to PUI.

3. The Association warrants that the plant is operational and complies with all Federal, State and local laws and regulations. The cost of the inspection will be shared by PUI and the Association.

4. This Agreement is contingent upon approval of its terms by the Florida Public Service Commission.

5. The Association and PUI have previously stipulated to a continuance of the Circuit Court case to permit the aforementioned inspection and the process of approval of this Agreement by the Public Service Commission.

6. PUI will supply and install bulk meters for Phases II and III of the Wilderness Subdivision and will bill the Association directly for water service for Phase II and Phase III.

7. PUI will assist the Association in obtaining billing service, including meter reading.

8. PUI will issue its first bill to the Association in April, 1994, for water provided in March.

9. All operating permits, past operating reports and testing reports will be supplied by the Association to PUI.

10. PUI and the Association will enter into a joint stipulation dismissing the Circuit Court action and the administrative proceeding, each side bearing its own costs and attorneys' fees.

11. This Agreement is entered into in Osceola County, Florida, and shall be interpreted in accordance with Florida law. The prevailing party in any action to enforce this Agreement shall be entitled to collect attorneys' fees.

12. All warranties contained herein shall survive the closing on the water plant conveyance.

13. A condition precedent to the filing of any action to enforce this Agreement shall be the provision of written notice, via certified mail, to the Association, c/o Robert S. Hayes, Esquire, 441 West Vine Street, Kissimmee, FL 34741 and to PUI, c/o Mr. Paul Bradtmiller, Poinciana Utilities, Inc., Post Office Box 21119, Sarasota, FL 34276 and Mr. Dennis J. Getman, Avatar Holdings, Inc., P. O. Box 523000, Miami, FL 33152.

POINCIANA UTILITIES INC.

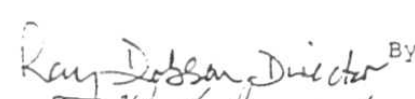
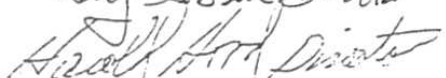
By: 

Its: EXEC. VICE PRES.

THE WILDERNESS HOMEOWNERS ASSOCIATION

By: 

Its: President

 Ray Johnson, Director
 Harold, Director