

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer
of Certificates Nos. 361-W and
316-S in Citrus County from J &
J Water and Sewer Corporation to
Meadows Utility Company, Inc.

DOCKET NO. 951026-WS
ORDER NO. PSC-97-1044-PHO-WS
ISSUED: September 4, 1997

Pursuant to Notice, a Prehearing Conference was held on August 29, 1997, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

Kevin Dixon, Esquire, Brannen, Stillwell & Perrin, Post
Office Box 250, Inverness, Florida 34451-0250
On behalf of J&J Water and Sewer Corporation/Meadows
Utility Company, Inc.

Dennis Jones and Brandi Marlene Austin-Jones, 3830 South
Pigeon Terrace, Homosassa, Florida 34448
On behalf of themselves.

Tim Vaccaro, Esquire, Florida Public Service Commission,
2540 Shumard Oak Boulevard, Tallahassee, Florida
32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

J & J Water and Sewer Corporation (J & J or utility) is a Class C utility which provides water and wastewater service to approximately 50 residential customers in The Meadows Subdivision (Subdivision) of Homosassa Springs in Citrus County. According to its 1993 annual report on file with the Commission, the utility had combined annual revenues of \$16,948 and a combined net operating loss of \$10,989.

DOCUMENT NUMBER-DATE
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The utility has operated under Certificates Nos. 361-W and 316-S since August 5, 1982. The utility owner died on August 14, 1994. On June 20, 1995, the beneficiaries of the developer filed a notice of intent to abandon the utility and this docket was opened. Instead of abandoning the utility, the beneficiaries sold the utility to Meadows Utility Company, Inc., (Meadows or buyer) on or about November 15, 1996.

On January 17, 1996, Meadows filed an application for transfer of Certificates Nos. 361-W and 316-S from J & J to Meadows. Utility customers raised a question regarding the sufficiency of Meadows' original notice of application. Therefore, staff recommended that Meadows renounce the utility customers. Meadows renounced the utility customers on December 18, 1996. On January 13, 1997, an objection to the application for transfer was timely filed, and this matter was set for an administrative hearing.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

III. POST-HEARING PROCEDURES

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

IV. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes

the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

V. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Paul Lafond	Meadows	1, 2, 3, 4, 7
Michael Posey	Meadows	1
Dennis Jones	Himself	4, 7
Brandi Marlene Austin-Jones	Herself	1, 4, 7
Phyllis James	Staff	3
Sandra Sequeira	Staff	3
Louis G. Badami	Staff	5
Bonnie J. Turaniczo	Staff	6

VI. BASIC POSITIONS

MEADOWS: The utility is the applicant for transfer of the Water Certificate No. 361-W and Sewer Certificate No. 316-S, presently in the name of J & J Water & Sewer Corporation. The facility operated by J & J Water and Sewer Corporation was slated for abandonment due to the failure of J & J Water & Sewer Corporation, a dissolved Florida corporation. The applicant has requested a stay of the abandonment. The application is a Florida corporation formed specifically to rehabilitate and operate the water and sewer facilities previously operated by J & J Water & Sewer Corporation in the Meadows Subdivision f/k/a Dexter Park Villas Subdivision.

DENNIS
AND
BRANDI
JONES:

The transfer of certificate should be denied to the Meadows Utility Inc. due to its lack of knowledge and expertise in the field of public service. The utility has proven beyond all measures that the principles cannot manage or provide service to the public under the rules of the Florida Public Service Commission. The principles of the utility have proven beyond all measures of their inability to provide accurate information at the request of the Florida Public Service Commission. The principles of the utility have not provided competent and substantial legal evidence of ownership for properties required for certificate. Accordingly, it is our position that the Commission should not grant a transfer of certificate.

STAFF:

The utility appears to own or has easement to the land upon which the utility treatment facilities are located. The utility's current water operations are in compliance with DEP, but wastewater operations are experiencing problems with respect to wastewater flows exceeding design capacity and the effectiveness of the percolation ponds. Service from Citrus County's central systems are not within geographic proximity to the utility and the former utility owners are unable and unwilling to resume providing utility services. Non-testifying staff has no position on the remaining issues pending further development of the record.

VII. ISSUES AND POSITIONS

ISSUE 1: Does Meadows Utility Company, Inc., own or have provision for continued use of the land upon which the utility treatment facilities are located, pursuant to Rule 25-30.037(2)(q), Florida Administrative Code?

POSITION:

MEADOWS: Yes. All water and wastewater facilities were deeded to the utility with the exception of one lift station. The one lift station is currently under a long term lease to the utility. Further, the common elements covering the

subdivision provide that all common elements are owned subject to their use for water and sewer utilities. (Lafond)

JONES: No. (B. Jones)

STAFF: Yes, it appears that Meadows Utility Company, Inc., either owns or has perpetual utility easement to the land upon which the utility treatment facilities are located.

ISSUE 2: Has Meadows Utility Company, Inc., demonstrated the financial ability to provide water and wastewater services to the territory previously granted J & J Water & Sewer Corporation, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code?

POSITION:

MEADOWS: Yes. The principals have submitted sufficient evidence to establish their financial ability to provide services and their commitment to do so. (Lafond)

JONES: No.

STAFF: No position pending further development of the record.

ISSUE 3: Has Meadows Utility Company, Inc., demonstrated the technical ability to operate, maintain and expand water and wastewater facilities to serve the territory previously granted J & J Water & Sewer Corporation, pursuant to Rule 25-30.037(2)(j) and (p), Florida Administrative Code?

POSITION:

MEADOWS: Yes. The utility has contracted with Gator Water and Wastewater Management to operate, maintain and assist with expansion to serve the territory. The utility has commenced taking corrective action in regard to the sewer facility and all water operations are in compliance with DEP. (Lafond)

JONES: No position pending further development of the record.

STAFF: The utility's water operations are in compliance with DEP. The utility has been notified by DEP to conduct corrective actions with respect to excessive wastewater flows and effectiveness of percolation ponds. (JAMES, SEQUEIRA)

ISSUE 4: Has Meadows Utility Company, Inc., demonstrated the ability to fulfill the commitments, obligations and representations of the seller with regard to utility matters, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code?

POSITION:

MEADOWS: Yes. The utility has maintained and improved water and sewer services since its purchase and upon transfer of the certificates will expand the existing facilities throughout the territory granted in the certificates. (Lafond)

JONES: No. (D. Jones, B. Jones)

STAFF: No position pending further development of the record.

ISSUE 5: Does service exist from other sources within geographic proximity to the utility and, if so, are such sources able and willing to provide reasonably adequate water and wastewater service to customers of the utility?

POSITIONS:

MEADOWS: No.

JONES: No position pending further development of the record.

STAFF: No. Citrus County's central systems are not within geographic proximity to the utility. No other sources for service within geographic proximity to the utility have been identified. (BADAMI)

ISSUE 6: Are there any other possible ownership options for this utility system, other than the applicant?

POSITION:

MEADOWS: No.

JONES: No position pending further development of the record.

STAFF: The former utility owners are unable and unwilling to resume providing utility services. Staff has no position as to whether the homeowners have the ability or willingness to own and control the utility systems pending further development of the record. (TURANICZO)

ISSUE 7: Is it in the public interest for the Commission to grant the transfer of Certificates Nos. 361-W and 316-S from J & J Water and Sewer Corporation to Meadows Utility Company, Inc.?

POSITION:

MEADOWS: Yes. The facilities were slated for abandonment. The utility has indicated its willingness and ability to undertake the obligations of the previous certificates holder. (Lafond)

JONES: No. (D. Jones, B. Jones)

STAFF: The public interest consideration is dependent upon the resolution of all previous issues and upon full consideration of all information presented at hearing. Staff takes no position on this issue pending further development of the record.

LEGAL ISSUES

ISSUE 8: Should the Commission order J & J Water & Sewer Corporation to show cause, in writing within 20 days, why it should not be fined for violation of Section 367.071, Florida Statutes?

POSITION:

MEADOWS: No.

JONES: Yes.

STAFF: No.

VIII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Paul Lafond	Meadows	_____ (PL-1)	Warranty Deeds
Paul Lafond	Meadows	_____ (PL-2)	Bill of Sale
Paul Lafond	Meadows	_____ (PL-3)	Water and Wastewater Lease Agreement
Paul Lafond	Meadows	_____ (PL-4)	Letter of agreement with Gator Water & Wastewater Management
Paul Lafond	Meadows	_____ (PL-5)	Personal Financial Statement of Paul Lafond
Paul Lafond	Meadows	_____ (PL-6)	Application for transfer of all of Water Certificate No. 361-W and Sewer Certificate No. 316-S

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Dennis Jones	Jones	_____ (DJ-1)	Proof of ownership to disputed properties
Dennis Jones	Jones	_____ (DJ-2)	Proof of ownership to disputed properties
Dennis Jones	Jones	_____ (DJ-3)	Objection to Transfer of Certificate
Dennis Jones	Jones	_____ (DJ-4)	Notice of intent to terminate service
Dennis Jones	Jones	_____ (DJ-5)	Water Tariff
Dennis Jones	Jones	_____ (DJ-6)	Notice of disconnect
Dennis Jones	Jones	_____ (DJ-7)	First billing at flat rate
Dennis Jones	Jones	_____ (DJ-8)	Meeting Agenda
Dennis Jones	Jones	_____ (DJ-9)	PSC facsimile re: rate establishment
Dennis Jones	Jones	_____ (DJ-10)	First billing at metered rate
Dennis Jones	Jones	_____ (DJ-11)	Notice of termination
Dennis Jones	Jones	_____ (DJ-12)	Notice of termination
Dennis Jones	Jones	_____ (DJ-13)	Notice of termination

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Dennis Jones	Jones	_____ (DJ-14)	Demand for proper rate
Dennis Jones	Jones	_____ (DJ-15)	First attempt for legal counsel
Dennis Jones	Jones	_____ (DJ-16)	U t i l i t y response to legal counsel
Dennis Jones	Jones	_____ (DJ-17)	Results to N o v e m b e r meeting
Dennis Jones	Jones	_____ (DJ-18)	Contract for sale
Dennis Jones	Jones	_____ (DJ-19)	Harassment and slander from Utility
Dennis Jones	Jones	_____ (DJ-20)	Agreement for Deed
Dennis Jones	Jones	_____ (DJ-21)	Utility letter to residents
Dennis Jones	Jones	_____ (DJ-22)	Harrassment and slander from utility
Dennis Jones	Jones	_____ (DJ-23)	Warranty Deed
Dennis Jones	Jones	_____ (DJ-24)	Warranty Deed
Dennis Jones	Jones	_____ (DJ-25)	Bill of Sale
Brandi Jones	Jones	_____ (BAJ-1)	Introductory letter
Brandi Jones	Jones	_____ (BAJ-2)	Warranty Deed

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Brandi Jones	Jones	_____ (BAJ-3)	Warranty Deed
Brandi Jones	Jones	_____ (BAJ-4)	Common Elements
Brandi Jones	Jones	_____ (BAJ-5)	Inspection Report
Brandi Jones	Jones	_____ (BAJ-6)	Insurance denial
Brandi Jones	Jones	_____ (BAJ-7)	Statement of equipment purchase
Brandi Jones	Jones	_____ (BAJ-8)	List of reported customers and amounts illegally billed
Brandi Jones	Jones	_____ (BAJ-9)	Notice of termination to unreported customer
Brandi Jones	Jones	_____ (BAJ-10)	Utility bill to unreported customer
Brandi Jones	Jones	_____ (BAJ-11)	Payment records from unreported customer
Brandi Jones	Jones	_____ (BAJ-12)	Payment records from reported customers and amounts paid
Brandi Jones	Jones	_____ (BAJ-13)	Utility letter of correction
Brandi Jones	Jones	_____ (BAJ-14)	Collection for turn on fee

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Brandi Jones	Jones	_____ (BAJ-15)	Billing of turn on fee
Brandi Jones	Jones	_____ (BAJ-16)	Return of improperly charged fees
Brandi Jones	Jones	_____ (BAJ-17)	Correction of wrongful turn on fee
Brandi Jones	Jones	_____ (BAJ-18)	Statement for unauthorized summer rate
Phyllis James	Staff	_____ (PJ-1)	DEP's August 22, 1996, inspection letter
Phyllis James	Staff	_____ (PJ-2)	DEP's February 21, 1997, inspection letter
Phyllis James	Staff	_____ (PJ-3)	DEP's June 30, 1997 inspection letter

Parties and staff reserve the right to identify additional exhibits for the purpose of cross-examination.

IX. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

X. PENDING MOTIONS


There are no pending motions at this time.

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It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 4th day of September, 1997.



SUSAN F. CLARK
Commissioner and Prehearing Officer

(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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of

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Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.