

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificates to operate a water and wastewater utility in Highlands County by The Woodlands of Lake Placid, L.P., and for deletion of portion of wastewater territory in Certificate No. 361-S held by Highlands Utilities Corporation.

DOCKET NO. 990374-WS
ORDER NO. PSC-02-0250-PAA-WS
ISSUED: February 26, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION SETTING MISCELLANEOUS SERVICE CHARGES AND SERVICE AVAILABILITY CHARGES AND ORDER GRANTING WATER AND WASTEWATER CERTIFICATES AND SETTING TEMPORARY RATES SUBJECT TO REFUND

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the actions discussed herein, setting miscellaneous service charges and service availability charges, 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.

BACKGROUND

The Woodlands of Lake Placid, L.P. (Woodlands or utility) is a Class C water and wastewater utility providing service in Highlands County. The utility provides water service to 164 residential customers located within the Lake Placid Camp Florida

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ORDER NO. PSC-02-0250-PAA-WS

DOCKET NO. 990374-WS

PAGE 2

Resort RV park (Camp Florida, Resort, or RV park) and 33 residential customers located outside the park (Hickory Hills and Lake Ridge Estates). They also provide water to 14 commercial customers. Wastewater service is provided to the 164 residential customers in the park and ten commercial customers. The utility is in the Highlands Ridge Water Use Caution Area of the Southwest Florida Water Management District (SWFWMD).

The utility first came to our attention when it applied for an exemption in Docket No. 881608-WS. At that time, the entity providing utility service was Camp Florida Resort Utility Association, Inc. (CFRUA). The application stated that Lake Placid Camp Florida Resort, Inc. (Developer) planned to construct a recreational vehicle and camping resort and the water and wastewater charges would be nonspecifically included in the cost of the site rentals. The Developer established CFRUA to provide the utility service for the Resort. We found CFRUA to be exempt pursuant to Section 367.022(4), Florida Statutes, by Order No. 20905, issued March 16, 1989. The Order required CFRUA or its successors to notify us within 30 days of any change in its method of operation which might change its regulatory status.

In 1990, the Developer began selling some of the RV sites. The Camp Florida Resort Property Owners Association (Association) was established around this time. We obtained copies of the Association's 1996 and 1997 budgets with a line item for water and wastewater service. Each year CFRUA informed the Association of the monthly lot rate for water and wastewater. The Association would then total the costs for all services to the lot owners and common areas, and assess each owner an annual lump sum amount, billed quarterly. Based on these budgets, it appears that CFRUA initially charged \$25.00 per lot for water and wastewater service per month. The transition from including water and wastewater service in the cost of the rental sites to billing the owners a specific charge was a change in the regulatory status of the system and should have been reported to us.

Early in 1995, the Florida Department of Environmental Protection (DEP) found contamination in the wells of approximately 33 homes in the Hickory Hills and Lake Ridge Estates (HHLR) housing developments near the south side of Resort. Pursuant to a request from DEP, CFRUA extended water lines to these homes outside of the Resort. DEP paid for the extension of the water line to serve the

customers who had contaminated wells. Wastewater service is provided through septic tanks. These new CFRUA customers were charged a flat rate of \$22.00 per month for water service. The provision of water service to HHLR was a change in the regulatory status of the system and should have been reported to us.

At some point prior to September 1995, CFRUA started providing water service to three commercial customers just outside the Resort. Wastewater service is provided to the commercial customers by Highlands Utilities Corporation.

On September 15, 1995, the utility was sold to Woodlands and the RV park was sold to one of the partners of Woodlands. Woodlands believed that CFRUA was exempt pursuant to Order No. 20905, and continued running the utility under the same parameters. Initially, this included the \$22.00 flat charge for water service to the residential customers located outside the Resort (HHLR), \$48.40 plus usage for water to the three commercial customers outside the Resort, and \$25.00 per month for water and wastewater service to the Association for privately owned lots within the Resort. Shortly thereafter, a fourth business was constructed near HHLR and began receiving water service from Woodlands.

On December 2, 1996, Woodlands sent a letter to the Resort, which was forwarded to the property owners and the Association, informing customers of a rate increase for water and wastewater service from \$25.00 per month to \$35.00 per month. As a result of this notice, a customer in the Resort filed a complaint about the rate increase with us on February 17, 1997. This complaint initiated an investigation, which determined that the utility's operations had changed such that it no longer appeared to be exempt.

Woodlands did not actually implement the rate change until January 1998. We sent several letters to Woodlands stating that the utility's status appeared to have changed and to apply for original certificates for an existing utility charging for service. The utility's attorney responded on May 22, 1998, requesting a 60-day extension for filing the application due to Circuit Court litigation. The attorney filed another letter on July 9, 1998, requesting that the utility be considered exempt under Section 367.022(7), Florida Statutes, as a nonprofit corporation. We sent a letter to the attorney on July 17, 1998, advising that the

ORDER NO. PSC-02-0250-PAA-WS

DOCKET NO. 990374-WS

PAGE 4

utility did not meet the exemption criteria, since that was not the utility's method of operation.

On August 6, 1998, the utility sent a letter to its attorney acknowledging our determination that the utility must submit an application for certification. Further, the letter acknowledged that the attorney's office did not handle the application process and requested a referral to another attorney for this process.

Around this time Woodlands decided that several of the Resort's public buildings should be metered and charged. Meters were installed and the commercial customers were charged \$48.40 per month plus usage.

The actual application for water certification was received on March 24, 1999. On July 26, 1999, the utility noticed the application for water certification. No protests were received. Deficiency letters were sent to the utility on April 22, 1999, and on September 14, 1999. While reviewing the utility's correction of deficiencies, we determined that the utility was also billing some customers for wastewater service. Therefore, we advised the utility that it must also complete an application for wastewater certification.

Beginning on July 1, 2000, the Woodlands started billing the Resort property owners directly for water and wastewater service. This direct billing started after the Association directors stated that they would no longer collect the quarterly assessment for the utility. The Woodlands also implemented a \$5.00 late fee applicable to all delinquent customer payments in July 2000.

The application for wastewater certification was received on September 11, 2000. A review of the application revealed several deficiencies. During the review of the utility's proposed territory description, we discovered an overlap of wastewater territory. The overlap was due to the fact that Highlands Utilities Corporation (Highlands) already had authorization to serve part of the utility's proposed wastewater territory. By way of a written agreement, Highlands agreed to allow Woodlands to serve the area. (Attachment A) The Woodlands and Highlands jointly renoticed the wastewater territory in July, 2001, to include this territory modification and delete this territory from the Highlands certificate.

A deficiency letter was mailed on October 25, 2000. Among the wastewater deficiencies identified were the notices of application for wastewater certification. The utility subsequently incorrectly issued notices of application for water certification instead of wastewater certification on January 20, 2001. On February 12, 2001, we received a petition signed by 22 customers protesting Woodland's application for Water and Wastewater Certificates based upon the current billing rates and procedures. A hearing was scheduled. On October 31, 2001, our staff held a conference call to discuss mediation of the dispute. During the discussion, our legal staff restated the normal certification process for existing utilities and explained that the customers would have the opportunity to object to the rates and charges after a decision is made as to whether a certificate should be granted. The customers expressed their desire for the utility to be regulated by us and acknowledged that it would be best to object to the rates and charges after the certification process is complete. By way of letter dated November 15, 2001, the customers withdrew their objections so the certification process could proceed.

Pursuant to Section 367.031, Florida Statutes, we shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application. The utility corrected all deficiencies on January 2, 2002. Therefore, the official filing date of this docket is January 2, 2002, which requires us to make a determination regarding granting certificates by April 2, 2002.

We have jurisdiction over this matter pursuant to Sections 367.031, 367.081, 367.091, and 367.161, Florida Statutes.

SHOW CAUSE

Operating without Certificate

As stated above, Woodlands is in apparent violation of Section 367.031, Florida Statutes, which states that each utility subject to the jurisdiction of this Commission must obtain a certificate of authorization to provide water or wastewater service. The utility has been providing water and wastewater service to the public for compensation since 1990 without a certificate of authorization from us.

In failing to timely obtain certificates, Woodlands is in apparent violation of the above-referenced statutory provision. Utilities are charged with the knowledge of our rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to obtain a certificate, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order GTE to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Section 367.161, Florida Statutes, authorizes us to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes.

We find that there are mitigating circumstances in this case to support that show cause proceedings are not warranted at this time. As stated above, Woodlands believed it was still exempt and in fact requested that it be considered an exempt non-profit corporation. Also, Woodlands started serving outside of Resort at the request of DEP. Moreover, once Woodlands was made aware that it was jurisdictional it immediately sought to start the application process. However, the attorney retained by Woodlands was not familiar with Commission practice and referred the case to another attorney. Once Woodlands retained an attorney familiar with Commission practice it completed its water and wastewater applications.

For the foregoing reasons, we find that the apparent violation of Section 367.031, Florida Statutes, does not rise in these circumstances to the level warranting the initiation of show cause proceedings. The delay in the completion of the application was due to circumstances largely beyond the control of the utility. For these reasons, the utility shall not be required to show cause why it should not be fined for failing to obtain certificates of

authorization from the Commission in apparent violation of Section 367.031, Florida Statutes.

Delinquent Annual Reports

Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to our jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Annual reports are due from regulated utilities regardless of whether the utility has actually applied for or been issued a certificate. Requests for extension of time must be in writing and must be filed before March 31. One extension of 30 days is automatically granted. A further extension may be granted upon a showing of good cause. Woodlands is in apparent violation of Rule 25-30.110(3), Florida Administrative Code, for the failure to file its 1995, 1996, 1997, and 1998 Annual Reports.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities, is \$3 per day, based on the number of calendar days elapsed from March 31, until the date of filing. As of the date of the February 5, 2002, Agenda Conference, for the utility's 1995, 1996, 1997, and 1998 annual reports, we have calculated that the total penalty would be \$19,089 calculated as follows:

YEAR	CALCULATION	AMOUNT
1995	2,139 Days late x \$3.00	\$6,417
1996	1,773 Days late x \$3.00	\$5,319
1997	1,408 Days late x \$3.00	\$4,224
1998	1,043 Days late x \$3.00	\$3,129
	TOTAL	\$19,089

The penalty, if it were assessed, would continue to accrue until such time as Woodlands files its 1995, 1996, 1997, and 1998 annual reports. We note that pursuant to Rule 25-30.110(6)(c), Florida

Administrative Code, we may, in our discretion, impose greater or lesser penalties for such noncompliance.

However there are mitigating circumstances in this case which lead us to find that show cause proceedings are not warranted at this time, nor shall penalties be assessed. As discussed above, Woodlands has had difficulties in completing its application requirements. The utility has in fact paid its regulatory assessment fees from the time it acquired the system in 1995, which payments included a statement of the utility's annual revenues. Furthermore, the utility filed its 2000 annual report on May 2, 2001. In light of these circumstances, the information contained in the delinquent reports is no longer needed for the ongoing regulation of the utility.

For the foregoing reasons, we find that the apparent violation of Rule 25-30.110(3), Florida Statutes, does not rise in these circumstances to the level of warranting the initiation of a show cause proceeding. Moreover, we find that the utility has demonstrated good cause for its apparent noncompliance. Therefore, Woodlands shall not be required to show cause why it should not be fined for its failure to file its 1995, 1996, 1997, and 1998 annual reports. The penalties set forth in Rule 25-30.110(7), Florida Administrative Code, shall not be assessed, as the information contained in the delinquent reports is no longer needed for the ongoing regulation of the utility. Additionally, Woodlands shall not be required to file 1995, 1996, 1997, and 1998 annual reports.

Unauthorized Rates

Section 367.081(1), Florida Statutes, provides that a utility may only charge rates and charges that have been approved by this Commission. Section 367.091(3), Florida Statutes, provides that "each utility's rates, charges, and customer service policies must be contained in a tariff approved by and on file with the Commission." As stated previously, Woodlands became jurisdictional when it began receiving specific compensation for its water and wastewater service. The rate implemented by Woodlands in 1990 was unauthorized, and thus was an apparent violation of Sections 367.081(1) and 367.091(3), Florida Statutes.

Although regulated utilities are charged with knowledge of our rules and statutes, we do not believe that The Woodland's apparent

violation of Sections 367.081(1) and 367.091(3), Florida Statutes, rises in these circumstances to the level that warrants the initiation of a show cause proceeding. We note that the utility's collection of charges in 1990 through 1995 occurred prior to the acquisition by the current owner in 1995. However, the utility is hereby put on notice that it may only charge rates and charges that have been approved by us.

REFUND OF UNAUTHORIZED RATES

As previously described, the utility has charged unauthorized rates to customers both within the Resort development and outside the development for both water and wastewater service since approximately 1990. We have estimated the amount of refund Woodlands might be required to make under several scenarios.

Should Woodlands be required to refund all of the funds collected since it started charging rates in 1990, the estimated refund would be approximately \$544,655 plus interest. The utility thought it could charge \$25 for water and wastewater service since the Association collected the rates as part of the Association's annual fees and paid the utility on behalf of the actual owners.

Should Woodlands be required to refund all of the funds collected for serving the 33 homes in HHLR in 1995, the estimated refund would be approximately \$44,154 plus interest. However, it should be noted that the utility responded to a request from DEP to provide water service to HHLR because the houses had contaminated wells. Again, the utility thought it was exempt and was trying to facilitate DEP's request.

Should Woodlands be required to refund all of the funds collected due to the rate increase from \$25 to \$35 in 1998, the estimated refund would be approximately \$12,095 plus interest. The utility instituted this rate increase at a time it believed it was exempt from our regulation. The manager of the utility, being responsible for the fiscal soundness of the utility, realized that the utility was losing money. He contacted other small utilities in the area for their rates so he could determine a reasonable rate for the water and wastewater charges. He proposed to increase the rates in 1996. However, due to pending litigation, the increase was delayed until January 1998.

Further, we reviewed data from the utility's 2000 Annual Report to compare Woodlands' operating expenses relative to the rates they are charging. The utility reported \$75,228 of revenue, \$88,664 of operating expenses, and a net operating loss of \$13,436 for water and wastewater service.

Pursuant to Section 367.121 (1)(a), Florida Statutes, we must prescribe fair and reasonable rates and charges. Ratemaking is a matter of fairness in which "[e]quity requires that both ratepayers and utilities be treated in a similar manner." GTE v. Clark, 668 So. 2d 971, 972 (Fla. 1996). Under the particular circumstances, we find that, requiring a full refund would likely bankrupt the utility, and that such a remedy would be draconian given that the rates the utility is charging is consistent with the temporary rates we are approving on a going forward basis. Since the customers enjoyed the benefit of receiving water and wastewater service and the utility's rates do not appear to be unreasonable, the utility shall not be required to make refunds at this time.

However, the utility shall hold the amount of the unauthorized rate increase from \$25 to \$35 from the date of implementation to February 5, 2002, estimated to be \$12,095, subject to refund, with interest pursuant to Rule 25-30.360, Florida Administrative Code, during the pendency of the staff assisted rate case, which is currently ongoing in our Docket No. 020010-WS.

APPLICATION FOR WATER AND WASTEWATER CERTIFICATES

As stated above, on March 24, 1999, an application was filed on behalf of Woodlands for an original water certificate for a utility in existence and charging rates. The application for an original wastewater certificate was filed on September 11, 2000, and it contained numerous deficiencies. The customers filed timely objections to the applications on February 9, 2001. The objections were withdrawn by the customers on November 15, 2001. The deficiency corrections filed January 2, 2002, became the official filing date. Pursuant to Section 367.031, Florida Statutes, we must grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application which, in this case, is April 2, 2002.

We find that applications as filed and amended are in compliance with the governing statute, Section 367.045, Florida

Statutes, and other pertinent statutes and administrative rules with regard to an application for a certificate of authorization for an existing utility currently charging for service. The applications contained checks for \$1,500 for water and \$750 for wastewater which are the correct filing fees pursuant to Rule 25-30.020, Florida Administrative Code. Pursuant to Rules 25-30.034(1)(h), (i), and (j), Florida Administrative Code, the applications also contained descriptions of the territory to be served, a copy of detailed system maps showing the location of the utility's lines and treatment facilities, and a copy of a tax assessment map including the plotted territory.

The water territory requested by the utility is described in Attachment B and the wastewater territory requested by the utility is described in Attachment C. As discussed above, Woodlands and Highlands have entered into an agreement (Attachment A) to allow Woodlands to continue to provide wastewater service to a portion of the RV park currently included in Highlands' authorized service area. Highlands indicated that they had not extended piping into the overlap territory and were willing to let Woodlands continue to serve the Woodlands customer in that territory. As a result, Woodlands and Highlands entered into an agreement to delete the territory from Highlands Wastewater Certificate No. 361-S so Woodlands could request the territory as part of its certificate application. In July 2001, a joint notice was issued regarding the deletion of territory from Highlands and the inclusion of the same territory in the Woodlands wastewater territory. No objections were filed as a result of the notice.

Woodlands has paid regulatory assessment fees (RAF) for 1995 through 2000 in the amount of \$14,985.34. All penalties and interest have also been paid.

Noticing. The application contained the requisite proof of noticing pursuant to Rule 25-30.030, Florida Administrative Code. Objections to the noticing for the water certificate were timely filed on February 12, 2001. Subsequent to a telephone conference call with the parties' attorneys explaining the normal certification process, the customers decided to withdraw their objections because they would have another entry point in the process to protest the rates and charges.

Department of Community Affairs. We have a Memorandum of Understanding with the Department of Community Affairs (DCA) in which each application for an original certificate, or an amendment to a certificate, is provided to the DCA for its input on the need for service and comprehensive plan consistency. The DCA provided its comments by memorandum dated September 29, 2000. DCA states the proposed and existing service territory of Woodlands is consistent with the Highlands County Comprehensive Plan. DCA does not recommend any objection to the application.

Utility Ownership. Pursuant to Rule 25-30.034(1)(a), (b), and (c), Florida Administrative Code, the application contained a description of the utility's ownership. The Woodlands of Lake Placid, L.P. is a limited partnership registered on September 14, 1995, in the Division of Corporations of the Florida Department of State. The names of the partners were provided.

Financial Ability. Rule 25-30.034(1)(d), Florida Administrative Code, requires a statement of the financial ability of the utility to continue to provide service. The application contains a statement that the applicant has adequate financial resources to continue to operate the systems and provide the required services, including any planned expansion of the systems. We reviewed financial statements of the managing partner which indicate that this partner has adequate assets available to continue to support the utility. The assets represent an adequate showing of financial ability.

Technical Ability. Pursuant to Rule 25-30.034(1)(d), Florida Administrative Code, the application contains a statement regarding the technical ability of the utility to continue to provide service. The utility employs an operator who holds DEP Class C drinking water treatment operator license and a Class C wastewater operator license. The owners of Woodlands have run the utility since its purchase in 1995.

DEP Permits. Rule 25-30.034(1)(k), Florida Administrative Code, requires the utility to provide the numbers and dates of any permits issued for the systems by the DEP. The applications list water permit number WC28-171989 issued in December 15, 1989, and wastewater permit number DO28-207230 issued March 17, 1992, by the DEP for the water and wastewater plant facilities.

The utility has two wells that each have a hydropneumatic tank that provide pressure in the water distribution system. According to DEP, the water system is rated at 550,000 gallons per day (gpd). The peak daily flows are about 260,000 gpd. We have contacted the DEP and learned that there is one outstanding notice of deficiency issued for the water system. This notice requires the installation of an automatic generator, which is scheduled to be delivered in January of 2002. It should be noted that since Woodlands implemented a Water Conservation Education Program in 2001 the average water flows are 20% lower, based on a comparison of 2000 and 2001 flows.

As indicated earlier, the utility is in the Highlands Ridge Water Use Caution Area of SWFWMD. According to the Consumptive Use Permit (CUP), the utility was required to install meters and apply to this Commission to implement a conservation rate structure. The conservation rate structure the SWFWMD would like implemented is an inverted rate structure. On January 2, 2002, the utility applied for a staff assisted rate case, Docket No. 020010-WS. A conservation rate structure will be addressed in that case.

For wastewater treatment the utility has one 50,000 gpd extended aeration domestic wastewater facility. The effluent is disposed of in two rapid infiltration basins that have total rated capacity of 50,000 gpd. Average monthly flows of about 25,000 gpd occur during the peak winter season. We contacted DEP and learned that there are no outstanding notices of violation issued for the wastewater system.

Existing and Proposed Customers. Pursuant to Rule 25-30.034(1)(n), Florida Administrative Code, the application contains a description of the customers currently served and proposed to be served by meter size. Since Woodlands is in the process of installing meters, this information was provided by customer type.

Woodlands currently provides water and wastewater service to 164 privately owned lots and 10 commercial connections within the Resort. Water service only is provided to the 33 home in HHLR and four commercial customers outside of the Resort.

	<u>Current</u>	<u>Proposed At Build Out</u>
Privately Owned Lots	164	794

Single Family (HHLR)	33	110
Commercial	14	17

The current and proposed wastewater service territory includes:

	<u>Current</u>	<u>Proposed At Build Out</u>
Privately Owned Lots	164	794
Commercial	10	14

Residential customers currently pay a flat rate for water usage. However, water meters are being installed pursuant to a requirement of SWFWMD concerning the establishment of conservation rates.

Proof of Land Ownership. Rule 25-30.034(1)(e), Florida Administrative Code, requires proof that the utility owns or has provided for the continued use of the land upon which the utility facilities are located. The application contained a copy of a recorded warranty deed of the transfer of the property to The Woodlands of Lake Placid, L.P., executed on September 15, 1995.

Public Interest. Section 367.045(1)(b), Florida Statutes, requires a finding of the need for service in the area involved, and the existence or non-existence of service from other sources within geographic proximity to the area. Since the area is already being served by the utility, the need is apparent and no local government or utility objected to Woodlands' applications for original certificates. Further, as previously discussed, the DCA has indicated that the proposed service territory is consistent with the Highlands County Comprehensive Plan.

We find that it is in the public interest to grant Woodlands Water Certificate No. 620-W and Wastewater Certificate No. 533-S to serve the water territory described in Attachment B and wastewater territory described in Attachment C, and that the applications for original certificates are hereby granted.

As previously discussed, Woodlands' proposed wastewater territory overlapped with territory included in the Highlands Utilities Corporation Wastewater Certificate No. 361-S. In July 2001, a joint notice was issued regarding the deletion of territory

from Highlands and the inclusion of the same territory in the Woodlands wastewater territory. No objections were filed as a result of the notice. Therefore, the agreement attached hereto as Attachment A and incorporated herein by reference is approved. The territory described in Attachment D attached hereto and incorporated herein by reference, shall be deleted from the Highlands Wastewater Certificate No. 361-S and added to Woodlands Certificate No. 533-S.

CHARGES AND TEMPORARY RATES

Pursuant to Rule 25-30.034(1)(g), Florida Administrative Code, the application indicated the rates and charges currently being charged. The utility bills its 164 customers with privately owned lots \$35 per month for water and wastewater service. The 10 commercial connections within the Resort are billed \$48.40 per month plus \$1.00 per 1,000 gallons for usage for water and wastewater service. Water service only is provided to the 33 home in HHLR for \$22 per month. The four commercial customers outside of Resort are billed \$48.40 per month plus \$1.00 per 1,000 gallons for water service only.

Rule 25-30.255(1), Florida Administrative Code, requires that each utility measure water sold on the basis of metered volume sales unless we approve a flat rate service arrangement for that utility. In order to design appropriate metered volume (usage) rates, usage data needs to be collected. However, meters have not yet been installed for all customers. The utility is in the process of installing meters as a condition of its CUP. Woodlands has submitted an application for a staff-assisted rate case, Docket No. 020010-WS, which will address a conservation rate structure based on metered usage.

We have reviewed the revenues and expenses reported in the utility's 2000 Annual Report. The utility reported a net operating loss for 2000. The utility should be allowed to recover reasonable cost of providing service. It appears that the utility's existing rates and charges are reasonable given the cost of providing service. However, during the SARC, the utility's books and records will be audited and issues concerning the appropriate revenue requirement and rate structure will be addressed. For the above reasons, we find that the utility shall continue charging its existing rates, on a temporary basis, until a change in rates is

approved by us in a subsequent proceeding. The utility shall keep an accurate and detailed account of the unauthorized rate increase from \$25 to \$35 on a going forward basis until the resolution of the staff assisted rate case. Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. In no instance should maintenance and administrative costs associated with any refund be borne by the customers. These costs are the responsibility of, and shall be borne by, the utility.

The utility provides residential water and wastewater services for a flat rate of \$35. For tariff and RAF purposes the rate should be broken into individual water and wastewater rates. Since the flat rate for water for HHLR is \$22, we find that \$22 shall be the water rate for the privately owned Camp Florida lots. The difference between \$35 for both services and \$22 for water service leaves a rate of \$13 for wastewater service. Therefore, we find that the flat rates for water and wastewater shall be set at \$22 and \$13, respectively.

The utility's existing rates for water and wastewater service are temporarily approved, subject to refund, as shown below:

RESIDENTIAL SERVICE

<u>Monthly Flat Rates</u>	<u>Total</u>	<u>Water</u>	<u>Wastewater</u>
Hickory Hills and Lake Ridge Estates	\$22.00	\$22.00	\$0.00
Privately Owned Lots	\$35.00	\$22.00	\$13.00

GENERAL SERVICE

<u>Monthly</u>	<u>Water and Wastewater</u>
Base charge	\$48.40
Charge Per 1,000 gallons	\$ 1.00

Miscellaneous Service Charges: The utility does not currently have miscellaneous service charges, other than a late payment fee.

The utility began charging the \$5.00 late payment charge when it began direct billing to the private lot owners. During the 13 months of July 1, 2000, through August 1, 2001, the utility had a total of 188 late payers or an average of 15 late payers per month. Woodlands has had about 197 customers for this entire period. Therefore, the late payers are approximately seven percent of the customers. The purposes of a late payment charge are to provide an incentive for customers to make timely payment and to place the cost burden on processing such delinquent notices solely upon those who are the cost causers.

Woodlands' cost justification for collection of a late payment charge are:

\$3.10	Labor (Research accounts to determine which payments have not been received)
\$1.55	Prepare and print late notice
\$0.01	Cost of paper and envelope
<u>\$0.34</u>	First class postage
\$5.00	Total

We have approved late payment charges in the amount of \$5 by Order No. PSC-96-1409-FOF-WU, issued November 20, 1996, in Docket No. 960716-WU, for Crystal River Utilities, Inc., and by Order No. PSC-98-1585-FOF-WU, issued November 25, 1998, in Docket No. 980445-WU, for Morningside Utility, Inc. We find that the costs indicated by the utility are reasonable and the \$5.00 late payment charge is hereby approved.

The purpose of the miscellaneous service charges is to recover the cost of providing these services. Consistent with Commission practice, when both water and wastewater services are provided, a single charge is appropriate unless circumstances beyond the control of the utility require multiple actions. For this reason, we find that miscellaneous service charges are prudent and reasonable. Therefore, the utility shall adopt our standard miscellaneous service charges shown below:

Miscellaneous Service Charges

	<u>Water</u>	<u>Wastewater</u>
Initial Connection Fee	\$15	\$15

Normal Reconnection Fee	\$15	\$15
Violation Reconnection Fee	\$15	Actual
Premises Visit Fee	\$10	\$10
Late Fee	\$ 5	\$ 5

Customer Billing. Rule 25-30.335(1), Florida Administrative Code, requires that a utility render bills to customers at regular intervals. The utility has provided information that it renders bills to its customers on a monthly basis. The utility has experienced some bill generating software problems in the past, which would result in the substitution of an incorrect date in the service date field. This problem resulted in many complaints from the customers. The utility worked with the software company to correct the problem. It appears to be corrected and we have not received a billing complaint during the last three months.

Return on Equity. According to the current leverage formula, authorized by Order No. PSC-01-2514-FOF-WS, issued December 24, 2001, in Docket No. 01006-WS, the return on common equity is capped at 11.34 percent for all water and wastewater utilities with equity ratios of less than 40 percent. A review of the utility's annual report shows that the utility is 100% debt financed. Therefore, we find that, on a going forward basis, Woodlands' return on equity shall be 11.34 percent.

In summary, the utility's existing rates for water and wastewater service are hereby approved on a temporary basis. Conservation rates will be considered by us in the recently initiated staff assisted rate case, Docket No. 020010-WS. The utility is allowed to continue to charge its existing late payment fee and the standard miscellaneous charges specified above. The utility has filed proposed water and wastewater tariffs. The effective date of the utility's charges and temporary rates shall be the stamped approval date of the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code.

SERVICE AVAILABILITY CHARGES

Rule 25-30.580(1)(a), Florida Administrative Code, states that the maximum amount of contributions-in-aid-of-construction (CIAC), net of amortization, should not exceed 75% of the total original cost, net of accumulated depreciation, of the utility's facilities and plant when the facilities and plant are at their designed

capacity. Rule 25-30.580(1)(b), Florida Administrative Code, states that the minimum amount of contributions-in-aid-of-construction should not be less than the percentage of such facilities and plant that is represented by the water transmission and distribution and wastewater collection systems.

The original developer installed the water and wastewater plant and the lines in Camp Florida, which was later sold to Woodlands. The utility does not collect plant capacity charges. According to the audit, the utility collected customer connection (Tap-in) charges of \$200 for water and \$400 for wastewater from the lots sold in Camp Florida. The customers in the HHLLR with contaminated wells were connected to the water system through a main extension funded by DEP. Since the utility is installing meters and may provide new service to undeveloped lots, the utility shall have meter installation charge, customer connection (Tap-in) charge and a main extension policy on a going forward basis.

The utility's proposed service availability policy states that the customer will be required to furnish the utility all necessary easements and right-of-ways and shall pay the actual cost of all line extensions required to serve the customer. This policy is consistent with Rule 25-30.580(2), Florida Administrative Code, which provides that, at a minimum, new customers should pay for the cost of lines.

The utility charges a meter installation fee of \$189 for a 5/8" x 3/4" meter and actual cost for larger meters. The proposal is reasonable and consistent with meter installation fees for other water utilities. No other service availability charges were proposed by the utility.

The utility's proposed service availability charges are shown below. The proposed service availability policy and charges are hereby approved and effective for connections made on or after the stamped approval date on the tariff sheets.

Approved

Meter Installation Fee

5/8" x 3/4"	\$189
Over 5/8" x 3/4"	Actual Cost

<u>Water Customer Connection (Tap-in) Charge</u>	\$200
ERC = 350 gpd	
<u>Wastewater Customer Connection (Tap-in) Charge</u>	\$400
ERC = 280 gpd	
<u>Water Main Extension Charge</u>	Actual Cost
ERC = 350 gpd	
<u>Wastewater Main Extension Charge</u>	Actual Cost
ERC = 280 gpd	

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Water Certificate No. 620-W and Wastewater Certificate No. 533-S to serve the water territory described in Attachment B and wastewater territory described in Attachment C, which are attached to this Order and incorporated herein, are granted to The Woodlands of Lake Placid, L.P. It is further

ORDERED that the agreement between The Woodlands of Lake Placid, L.P. and Highlands Utilities Corporation attached hereto as Attachment A and incorporated herein by reference is hereby approved. It is further

ORDERED that the territory described in Attachment D attached hereto and incorporated herein by reference, shall be deleted from the Highlands Utilities Corporation Wastewater Certificate No. 361-S. It is further

ORDERED that charges and temporary rates are approved for The Woodlands of Lake Placid, L.P., as set forth herein. It is further

ORDERED that the effective date of the utility's charges and temporary rates shall be the stamped approval date of the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code. It is further

ORDER NO. PSC-02-0250-PAA-WS

DOCKET NO. 990374-WS

PAGE 21

ORDERED that the utility shall hold the amount of the unauthorized rate increase from \$25 to \$35 from the date of implementation to February 5, 2002, estimated to be \$12,095, subject to refund, with interest pursuant to Rule 25-30.360, Florida Administrative Code, during the pendency of the staff assisted rate case. It is further

ORDERED that The Woodlands of Lake Placid, L.P. shall keep an accurate and detailed account of the unauthorized rate increase from \$25 to \$35 on a going forward basis until the resolution of the staff assisted rate case. It is further

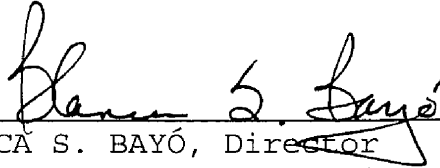
ORDERED that no later than the 20th of each month, The Woodlands of Lake Placid, L.P. shall file monthly reports consistent with the requirements set forth in the body of this Order. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that the provisions of this Order, setting miscellaneous service charges and service availability charges, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed upon the disposition of Docket No. 020010-WS.

ORDER NO. PSC-02-0250-PAA-WS
DOCKET NO. 990374-WS
PAGE 22

By ORDER of the Florida Public Service Commission this 26th
day of February, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

JKF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 actions setting miscellaneous service charges and service availability charges, are preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 19, 2002. If such a petition is filed, mediation may be available on a case-by-case

ORDER NO. PSC-02-0250-PAA-WS

DOCKET NO. 990374-WS

PAGE 23

basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating 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.

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 the Commission Clerk and Administrative Services 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 wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.

AGREEMENT

It is hereby mutually agreed that Highlands Utilities Corporation, whose address is 720 US Highway 27 South, Lake Placid, FL 33852, a utility operating within Highlands County, Florida, agrees to delete that portion of the waste water service area within Camp Florida Resort, and which waste water service is currently being provided by The Woodlands of Lake Placid, L. P., and is as described in Exhibit A. Highlands Utilities Corporation agrees not to withhold the described property from The Woodlands of Lake Placid, L. P. service area.

It is hereby mutually agreed that The Woodlands of Lake Placid, L.P. whose address is 1525 US 27 South, Lake Placid, FL 33852, a utility operating within Highlands County, Florida, does hereby agree to continue to provide waste water service to Camp Florida Resort that is currently within that portion of Highlands Utilities Corporation described service area. Furthermore, The Woodlands of Lake Placid L.P. does hereby agree to prepare a written agreement, provide a legal description of said service area, mail and publish notices pertaining to the deletion of that portion of Camp Florida Resort from the Highlands Utilities Corporation service area. The costs of preparation of this agreement, the legal description and mailing and publishing of the notices as required by the Florida Public Service Commission will be the sole responsibility of The Woodlands of Lake Placid, L. P. Furthermore, The Woodlands of Lake Placid, L.P. shall not look to Highlands Utilities Corporation for any remuneration whatsoever related to the costs of deleting the area from Highlands Utilities Corporation and including the area in The Woodlands of Lake Placid, L. P.

For and on the behalf of Highlands Utilities Corporation:

Dated this 2 day of July, 2001.

Witness

[Signature]

[Signature]
Printed Name DIXON PUGH

Witness

[Signature]

Title President

For and on the behalf of The Woodlands of Lake Placid, L.P.

Dated this 13th day of July, 2001

Witness

[Signature]

[Signature]
Printed Name John H. LOVELETTE

Witness

[Signature]

Title MANAGER

EXHIBIT A

**LEGAL DESCRIPTION
FOR THE WOODLANDS OF LAKE PLACID
SEWER DISTRICT**

Begin at a point on the North line of Section 17, Township 37 South, Range 30 East, Highlands County, Florida, 660 feet Easterly of the East right-of-way line of US Highway 27, as measured at right angles; thence run Easterly along the North line of Section 17 a distance of 2,975 feet more or less, to the shore line of Lake Grassy; thence run Southerly and Southwesterly along the shore line of Lake Grassy (a straight line to this point is a distance of 2,250 feet more or less) to a point that is 413.15 feet North of the South line of the Northeast ¼ and the Northwest ¼ of Section 17; thence run Westerly, along a line 413.15 North of the South line of said Northeast ¼ and 413.15 North of the South line of said Northwest ¼ a distance of 1,630 feet more or less, to a point that is 660 feet Easterly of the East right-of-way line of US Highway 27, as measured at right angles; thence run Northwesterly, 660 feet East of and parallel with the Easterly right-of-way line of US Highway 27, a distance of 2,500 feet more or less to the Point of Beginning.

AND

The North 300 feet of the South 750 feet of the West 410 feet of the East 1/2, of the East 1/2, of the Southwest 1/4 of Section 8, Township 37 South, Range 30 East, Highlands County, Florida.

AND

The West 210 feet of the South 450 feet of the East 1/2, of the East 1/2 of the SW 1/4 of Section 8, Township 37 South, Range 30 East, Highlands County, Florida.

AND

That portion of *Lake Placid Camp Florida Resort*, as recorded in Plat Book 15, Page 93, Highlands County, Florida, previously being a part of the territory described in Highlands Utilities Corporation service area, being more particularly described as follows: Commence on the North line of Section 17, Township 37 South, Range 30 East, 660 feet Easterly of, as measured at right angles to the East right of way line of US 27; thence Southeasterly along a line that is 660 feet East of and parallel with the said East right of way line, 300 feet more or less to the North line of said *Lake Placid Camp Florida Resort* and the Point of Beginning; thence continuing Southeasterly along the line 660 feet East of and parallel with said right of way line, 778.39 feet more or less to the South line of said *Lake Placid Camp Florida Resort*; the following 15 calls are along the boundary of said *Lake Placid Camp Florida Resort*, (1) thence N81°58'06"W, 29.61 feet; (2) thence N35°18'13"W, 256.10 feet; (3) thence S88°19'15"W, 135.89 feet; (4) thence N69°05'48"W, 8.86 feet; (5) thence S65°07'11"W, 291.84 feet; (6) thence N24°52'49"W, 174.00 feet; (7) thence S65°07'11"W, 165.76 feet to said right of way line; (8) thence N24°49'46"W, 157.95 feet; (9) thence N65°08'22"E, 25.57 feet; (10) thence N24°51'38"W, 219.42 feet; (11) thence N80°20'00"E, 107.91 feet; (12) thence N87°00'00"E, 218.15 feet; (13) thence N50°00'00"E, 166.49 feet; (14) thence N75°29'10"E, 115.12 feet; (15) thence along the arc of a curve to the right with a central angle of 08°24'16", whose radius is 377.51 feet, with a chord bearing of N79°41'18"E, and a chord distance of 55.33 feet, an arc distance of 55.38 feet to the Point of Beginning.

THE WOODLANDS OF LAKE PLACID, L.P.

HIGHLANDS COUNTY

WATER SERVICE AREA

Commence at the Northwest corner of Section 17, Township 37 South, Range 30 East, Highlands County, Florida; thence East along the North line of said Section 17, 824 feet, more or less, to the intersection of the North line of said Section 17 and the East right-of-way line of U. S. Highway 27 extended, being the Point of Beginning; thence continue East along the said North line of Section 17, 3700 feet, more or less, to the shoreline of Lake Grassy; thence South and Southwesterly along the shoreline of said Lake Grassy, 5600 feet, more or less, to the South line of said Section 17 and the said East right-of-way line of U.S. Highway 27; thence Northwest along said East right-of-way line, 5950 feet, more or less, to the Point of Beginning.

THE WOODLANDS OF LAKE PLACID, L.P.

HIGHLANDS COUNTY

WASTEWATER SERVICE AREA

The Woodlands of Lake Placid, L.P. (Original Certificate -
Wastewater Service Area)

Begin at a point on the North line of Section 17, Township 37 South, Range 30 East, Highlands County, Florida, 660 feet Easterly of the East right-of-way line of US Highway 27, as measured at right angles; thence run Easterly along the North line of Section 17 a distance of 2,975 feet more or less to the Shore line of Lake Grassy, thence run Southerly and Southwesterly along the shore line of Lake Grassy (a straight line to this point is a distance of 2,250 feet more or less) to a point that is 413.15 feet North of the South line of the Northeast 1/4 and the Northwest 1/4 of Section 17; thence run Westerly along a line 413.15 feet North of the South line of said Northeast 1/4 and 413.15 feet North of the South line of said Northwest 1/4 to a point that is 600 feet Easterly of the East right-of-way line of US Highway 27, as measured at right angles; thence run Northwesterly, 660 feet East of and parallel to the Easterly right-of-way line of US Highway 27 to the Point of Beginning. And, The North 300 feet of the South 750 feet of the West 410 feet of the East 1/2 of the East 1/2 of the Southwest 1/4 of Section 8, Township 37 South, Range 30 East, Highlands County, Florida. And, The West 210 feet of the South 450 feet of the East 1/2 of the East 1/2 of the SW 1/4 of Section 8, Township 37 South, Range 30 East, Highlands County, Florida.

Wastewater Service Area (Original Certificate) to be added to The
Woodlands of Lake Placid, L.P. and Deleted from Highlands Utilities
Corporation Service Area

Township 37 South, Range 30 East, Section 17- That portion of Lake Placid Camp Florida Resort, as recorded in Plat Book 15, Page 93, Highlands County, Florida, previously being part of the territory described in Highlands Utilities Corporation service area, being more particularly described as follows: Commence on the North line of Section 17, Township 37 South, Range 30 East, 660 feet Easterly

ORDER NO. PSC-02-0250-PAA-WS

DOCKET NO. 990374-WS

PAGE 28

of, as measured at right angles to the East right of way line of U.S. 27; thence Southeasterly along a line that is 660 feet East of and parallel with the said East right of way line, 300 feet more or less to the North line of said Lake Placid Camp Florida Resort and the **Point of Beginning**; thence continuing South easterly along the line 660 feet East of and parallel with said right of way line, 778.39 feet more or less to the South line of said Lake Placid Camp Florida Resort; the following 15 calls are along the boundary of said Lake Placid Camp Florida Resort, (1) thence $N81^{\circ}58'06''W$, 29.61 feet; (2) thence $N35^{\circ}18'13''W$, 256.10 feet; (3) thence $S88^{\circ}19'15''W$, 135.89 feet; (4) $N69^{\circ}05'48''W$, 8.86 feet; (5) thence $S65^{\circ}07'11''W$, 291.84 feet; (6) thence $N24^{\circ}52'49''W$, 174.00 feet; (7) thence $S65^{\circ}07'11''W$, 165.76 feet to said right of way line; (8) thence $N24^{\circ}49'46''W$, 157.95 feet; (9) thence $N65^{\circ}08'22''E$, 25.57 feet; (10) thence $N24^{\circ}51'38''W$, 219.42 feet; (11) thence $N80^{\circ}20'00''E$, 107.91 feet; (12) thence $N87^{\circ}00'00''E$, 218.15 feet; (13) thence $N50^{\circ}00'00''E$, 166.49 feet; (14) thence $N75^{\circ}29'10''E$, 115.12 feet; (15) thence along the arc of a curve to the right with a central angle of $08^{\circ}24'16''$, whose radius is 377.51 feet, with a chord bearing of $N79^{\circ}41'18''E$, and a chord distance of 55.33 feet, an arc distance of 55.38 feet to the **Point of Beginning**.

HIGHLANDS UTILITIES CORPORATION

HIGHLANDS COUNTY

DELETION OF WASTEWATER TERRITORY

Wastewater Service Area (Original Certificate) to be added to The Woodlands of Lake Placid, L.P. and Deleted from Highlands Utilities Corporation Service Area

Township 37 South, Range 30 East, Section 17- That portion of Lake Placid Camp Florida Resort, as recorded in Plat Book 15, Page 93, Highlands County, Florida, previously being part of the territory described in Highlands Utilities Corporation service area, being more particularly described as follows: Commence on the North line of Section 17, Township 37 South, Range 30 East, 660 feet Easterly of, as measured at right angles to the East right of way line of U.S. 27; thence Southeasterly along a line that is 660 feet East of and parallel with the said East right of way line, 300 feet more or less to the North line of said Lake Placid Camp Florida Resort and the **Point of Beginning**; thence continuing South easterly along the line 660 feet East of and parallel with said right of way line, 778.39 feet more or less to the South line of said Lake Placid Camp Florida Resort; the following 15 calls are along the boundary of said Lake Placid Camp Florida Resort, (1) thence N81°58'06"W, 29.61 feet; (2) thence N35°18'13"W, 256.10 feet; (3) thence S88°19'15" W, 135.89 feet; (4) N69°05'48"W, 8.86 feet; (5) thence S65°07'11"W, 291.84 feet; (6) thence N24°52'49"W, 174.00 feet; (7) thence S65°07'11"W, 165.76 feet to said right of way line; (8) thence N24°49'46"W, 157.95 feet; (9) thence N65°08'22"E, 25.57 feet; (10) thence N24°51'38"W, 219.42 feet; (11) thence N80°20'00"E, 107.91 feet; (12) thence N87°00'00"E, 218.15 feet; (13) thence N50°00'00"E, 166.49 feet; (14) thence N75°29'10"E, 115.12 feet; (15) thence along the arc of a curve to the right with a central angle of 08°24'16", whose radius is 377.51 feet, with a chord bearing of N79°41'18"E, and a chord distance of 55.33 feet, an arc distance of 55.38 feet to the **Point of Beginning**.