

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for transfer of non-jurisdictional Laurel Oaks Wastewater System in Lee County from The Laurel Oaks Property Owners Association, Inc. to Forest Utilities, Inc.

DOCKET NO. 060169-SU  
ORDER NO. PSC-06-0538-FOF-SU  
ISSUED: June 26, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

ORDER GRANTING TRANSFER OF WASTEWATER SYSTEM FROM  
THE LAUREL OAKS PROPERTY OWNERS ASSOCIATION, INC. TO  
FOREST UTILITIES, INC.

BY THE COMMISSION:

Background

Forest Utilities, Inc. (Forest or utility) is a Class B wastewater utility serving approximately 2,207 customers in Lee County. The utility is in the South Florida Water Management District and is located in the designated water resource caution area of the district. Water service is provided by Lee County Utilities. The utility's 2005 annual report shows total operating revenue of \$705,367 and a net operating loss of \$34,563. In 1981, the utility was granted Certificate No. 300-S in Order No. 10430.<sup>1</sup> We approved an amendment to the certificated territory in Docket No. 960229-SU.<sup>2</sup>

On February 28, 2006, Forest filed an application for authority to transfer the assets of the Laurel Oaks wastewater system from the Laurel Oaks Property Owners Association, Inc. (Association or Seller) to Forest. The Association entered into an agreement with Forest to transfer all ownership interest in the Laurel Oaks wastewater system when it became the subject of a consent order with the Florida Department of Environmental Protection (DEP). Before this agreement, the residents were in danger of losing their wastewater service and the plant had become an environmental hazard. The consent order required substantial repairs or the removal of the package treatment system. Instead, the association entered into an agreement with Forest

<sup>1</sup> Docket No. 810006-S, issued on December 02, 1981, In Re: Application for original sewer certificate by Forest Utilities, Inc.

<sup>2</sup> Docket No. 960229-SU, issued on July 17, 1996, In Re: Application for Amendment of Certificate No. 300-S in Lee County by Forest Utilities, Inc.

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to provide wastewater service to its members through an interconnection. We have jurisdiction pursuant to Sections 367.045(2) and 367.071, Florida Statutes.

### Transfer

On February 28, 2006, Forest applied for transfer of the Laurel Oaks wastewater system in Lee County from the Laurel Oaks Property Owners Association, Inc. to Forest. The transfer is contingent on our approval and the closing is scheduled to take place within 30 days of our approval.

The application is in compliance with the governing statute, Section 367.071 and 367.045, Florida Statutes, and other pertinent statutes and rules concerning an application for transfer. Pursuant to Rule 25-30.030, Florida Administrative Code, the application contains proof of compliance with the noticing provisions. One objection to the application was received; however, the objection was withdrawn. No other objections were received and the time for filing such has expired.

A copy of the purchase agreement is included in the application which includes the sales price, terms of payment, and a list of the assets purchased. There are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, or leases that must be disposed of in relation to the transfer. Under the terms of the purchase agreement, the Laurel Oaks wastewater treatment plant, which is adjacent to Forest's service territory, will be dismantled by the Association and the developer will construct and donate the facilities needed to interconnect the Laurel Oaks system to Forest. The agreement limits the costs of the interconnection to \$100,000 for the developer. According to the applicant, \$100,000 is sufficient for the construction of an interconnection. However Forest is responsible for any costs that exceed \$100,000. Since no cash is changing hands between Forest and Laurel Oaks as a result this transaction, there is no financing.

Forest states that the transfer is in the public interest because it has over 25 years of experience in providing wastewater service in Lee County under the regulation of the Florida Public Service Commission. The utility is well managed and has demonstrated its technical and financial ability to provide wastewater service within its service territory in Lee County. The Laurel Oaks members will receive the expertise of a professionally managed and operated utility. The applicant will fulfill all of its commitments, obligations, and representation with regard to utility matters.

We have confirmed with DEP that Forest is currently in environmental compliance with respect to DEP standards. Forest has sufficient excess capacity to serve the Laurel Oaks subdivision. The treatment facilities are currently underutilized and the additional customers of the Laurel Oaks subdivision will increase Forest's annual revenues by five percent. Forest's expected increase in annual earnings is based on the minor increase in variable costs and the fixed costs associated with the idle capacity that will be shared over a larger customer base.

The utility's certificate shall be amended to reflect the additional service area of Laurel Oaks. The Laurel Oaks service area includes 113 residential customers and two general service customers. Upon approval, Forest intends to begin charging its residential and general service rates to the residents of the Laurel Oaks subdivision which are identical to the rates charged by the Association. The present customers of the Laurel Oaks subdivision are not required to pay Forest's service availability charges. Any future connections requested in the Laurel Oaks subdivision will be required to pay Forest's service availability charges.

We have also verified that Forest has no outstanding regulatory assessment fees (RAFs) and no fines or refunds are owed. The utility has filed its 2005 annual report and paid its 2005 RAFs and there are no outstanding penalties and interest.

Based on the above, we find that the transfer of the Laurel Oaks wastewater system to Forest is in the public interest and is hereby approved effective June 6, 2006. The rates and charges approved for Forest shall be continued until authorized to change by this Commission in a subsequent proceeding. Certificate No. 300-S shall be amended to include the territory described in Attachment A, attached hereto and incorporated herein by reference.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of the wastewater system from the Laurel Oaks Property Owners Association, Inc. to Forest Utilities, Inc. is hereby approved effective June 6, 2006. It is further

ORDERED that Certificate No. 300-W shall be amended to include the territory described in Attachment A. It is further

ORDERED that all attachments appended hereto shall be incorporated herein by reference. It is further

ORDERED that Forest Utilities, Inc. shall continue the existing rates and charges until authorized a change by this Commission in a subsequent proceeding. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 26th day of June, 2006.

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

By: Kay Flynn  
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 120.569(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.

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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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.

Forest Utilities, Inc.  
In Lee County

Description of Territory Served

Laurel Oaks Subdivision  
Phases I and II

Laurel Oaks, Unit 1, according to the Plat thereof, recorded in Plat Book 52, Pages 24 through 29, inclusive, of the Public Records of Lee County, Florida

Laurel Oaks, Unit II, a subdivision, as recorded in Plat Book 56, Pages 13 through 17, inclusive, of the Public Records of Lee County, Florida

Also described as:

The South One-Half (S1/2) of the North One-Half (N1/2) of the Southeast Quarter (SE1/4) of Section 36, Township 45 South, Range 24 East, Lee County, Florida