

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for grandfather certificate to operate wastewater utility in Okeechobee County by Zachary Taylor Camping and Lodge, Inc.

DOCKET NO. 040793-SU
ORDER NO. PSC-06-0666-PAA-SU
ISSUED: August 7, 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

FINAL ORDER GRANTING CERTIFICATE AND
NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING EXISTING RATES AND CHARGES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding the rates and charges is 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

On May 13, 2004, the Okeechobee County Board of County Commissioners adopted Resolution No. 2004-16 declaring the water and wastewater utilities in that County subject to the provisions of Chapter 367, Florida Statutes. We acknowledged the resolution on June 15, 2004.¹ Pursuant to Section 367.171(2)(b), Florida Statutes, each utility engaged in the operation or construction of a system is entitled to receive a certificate for the area served on the day the Chapter becomes applicable to it.

According to the application, Zachary Taylor Camping and Lodge, Inc. (Zachary Taylor or utility) was established on February 23, 1978, to serve a 257 lot recreational vehicle park called Zachary Taylor Camping and Lodge (RV Park), which is also owned by Zachary Taylor, and an adjacent 88 unit condominium currently owned by the Taylor Creek Condominium Association (Taylor Creek). The lots in the RV Park are owned by Zachary Taylor which provides a variety of lease and overnight lodging options. All costs for wastewater service in the RV Park are included non-specifically in the leases and overnight lodging fees. As such, but for

¹ Order No. PSC-04-0593-FOF-WS, in Docket No. 040469-WS, In Re: Resolution of the Board of County Commissioners of Okeechobee County declaring Okeechobee County subject to the provision of Chapter 367, F.S.

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service to Taylor Creek, the utility would be exempt from regulation pursuant to Sections 367.022(4) and (5), Florida Administrative Code, which exempt public lodging establishments and landlords that do not receive specific compensation for service. The utility bills Taylor Creek a specific monthly flat rate for wastewater service.

The utility is located in a portion of the South Florida Water Management District which is considered a critical water supply problem area. Bulk water service is provided separately to Zachary Taylor and Taylor Creek by the Okeechobee Utility Authority (OUA). The lots in the RV Park have individual water meters which the utility reads and bills monthly at a rate which does not exceed the actual purchase price. Therefore, water service to the RV Park is exempt from Commission regulation pursuant to Section 367.022(8), Florida Statutes, which exempts entities that resell service at or below purchase price. The provision of water service to Taylor Creek is exempt from regulation pursuant to Section 367.022(7), Florida Statutes, which exempts condominiums providing service solely to members.

On July 28, 2004, Zachary Taylor filed an application for a certificate to provide wastewater service in Okeechobee County. The application was found to be deficient. By letter dated November 10, 2004, the utility requested an extension of time to complete deficiencies based on previous hurricanes and family medical emergencies. The utility completed the filing requirements on March 29, 2005. At that time, the utility was still attempting to assemble the books and records necessary to file its 2004 annual report and provide us with the documentation necessary to determine whether revenues from Taylor Creek might be subsidizing service to the RV Park. The utility's 2004 annual report was late-filed on July 8, 2005, with supporting documentation filed on August 17, 2005. Due to the continuing health issues of the owner and his accountant, it took several months to obtain information sufficient to complete an analysis of the utility's current rates.

This order addresses the application for a grandfather wastewater certificate and rates and charges. We have jurisdiction pursuant to Sections 367.045, 367.081, and 367.171, Florida Statutes.

Grandfather Certificate

The utility's application for a grandfather certificate is in compliance with the governing statute and administrative rules. Pursuant to Rule 25-30.030(9), Florida Administrative Code, noticing does not apply to applications for grandfather certificates. The application contains a legal description for the territory served as well as system and territory maps. A description of the territory is attached hereto as Attachment A. The application also contains a recorded warranty deed in the name of Zachary Taylor Camping and Lodge, Inc., as proof of ownership of the land upon which the wastewater treatment facilities are located.

The wastewater system consists of a 40,000 gallon per day extended air treatment system with disposal to two percolation ponds. According to the Florida Department of Environmental Protection, there are no enforcement actions or corrective orders against the system and the utility's operating permit was renewed in 2003.

The utility is current in filing its regulatory assessment fees (RAFs) and has filed its 2004 annual report. Although the utility has not yet filed its 2005 annual report, it has requested and has been granted an extension due to the extraordinary health circumstances of its accountant. We have also explained the need for the utility to maintain its books and records according to the National Association of Regulatory Utility Commissioners (NARUC) uniform system of accounts (USOA) as well as the need to keep utility books and records separate from non-utility books and records. As a result, Zachary Taylor has provided a statement that the books and records of the utility are in compliance with NARUC's USOA, including the ability to provide separate general ledgers for utility and non-utility records.

Based upon the above, Zachary Taylor Camping and Lodge, Inc.'s application for a grandfather certificate is hereby approved. The utility shall be issued Certificate No. 538-S, effective May 13, 2004, to serve the territory described in Attachment A.

Rates and Charges

Okeechobee County did not exert jurisdiction over the rates and charges of privately-owned water and wastewater utilities within the County. According to the application, the charge for wastewater service to Taylor Creek was established by contract and there has never been a specific charge for wastewater service to the RV Park. In addition, the utility has no service availability charges nor has it requested miscellaneous service charges. Taylor Creek consists of 88 condominium units. The RV Park consists of 257 lots and associated common facilities, including a pool with shower rooms, clubhouse, dockage, laundry, small store, and an office. Therefore, there are 351 wastewater connections.

Wastewater service within the RV Park is provided to four classes of customers, including perpetual members, full-time leases, part-time leases, and overnight lodgers. The cost of wastewater service is recovered nonspecifically in lot rent and overnight lodging fees. If the utility were only providing wastewater service to the RV Park, the service would be exempt from Commission regulation pursuant to Section 367.022(5), Florida Statutes, which exempts landlords providing service to their tenants without specific compensation for the service and Section 367.022(4), Florida Statutes, which exempts public lodging establishments. However, the utility is also providing wastewater service to Taylor Creek for specific compensation.

According to the application, the utility currently charges Taylor Creek a monthly general service rate of \$2,032.80 for wastewater service. This charge is based on \$23.10 per unit for each of the condominium's 88 units. Service to Taylor Creek is pursuant to a 50-year Sewage System Agreement (service agreement) which was entered into when the utility was first established in 1978, and has been subsequently assigned to Taylor Creek. The service agreement, most recently updated on November 5, 2002, includes provisions for an annual increase of 2.9%. We have explained to the utility that this provision is not authorized under our regulation. Instead, the utility was provided the information to apply for an annual price index pursuant to Section 367.081(4)(a), Florida Statutes.

For a grandfather certificate, we generally approve the utility's existing rates and charges. However, because the County did not authorize the utility's rates and because there is a specific monthly charge for wastewater service to Taylor Creek, but not the RV Park, we requested additional data to determine whether revenues from Taylor Creek were subsidizing the provision of wastewater service to the RV Park. We first analyzed water use data provided by the OUA. Based on the data, it appears that the Taylor Creek condo units use a similar amount of water on an average annual basis to the lots in the RV Park. Therefore, both entities place a similar demand on the wastewater system. We then analyzed detailed operating costs and supporting documentation from the utility. While the utility reported higher than normal operating costs in 2004 due to hurricane damage, the utility's operating costs appeared to be reasonable and covered by the revenues that would be generated if the \$23.10 per unit collected from Taylor Creek were also collected from each lot and common facility in the RV Park. Therefore, it appears that \$23.10 is a reasonable monthly wastewater flat rate for both the condo units in Taylor Creek and the lots in the RV Park.

Therefore, we find that the current monthly general service flat rate of \$23.10 per unit for Taylor Creek is reasonable and shall be continued. In addition, the utility is authorized to charge \$23.10 per month for each lot and common facility in the RV Park. Any monthly charges for the RV Park not collected shall be imputed. The utility shall charge this rate until authorized to change it by this Commission in a subsequent proceeding. The utility shall provide a revised tariff reflecting the Commission approved rates within 30 days from the date of the Consummating Order. Pursuant to Rule 25-30.475(1), Florida Administrative Code, the effective date of the tariff shall be the stamped approval date.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Zachary Taylor Camping and Lodge, Inc.'s application for a grandfather wastewater certificate is hereby approved effective May 13, 2004. It is further

ORDERED that Zachary Taylor Camping and Lodge, Inc. shall be issued Certificate No. 538-S to serve the territory described in Attachment A. It is further

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

ORDERED that Zachary Taylor Camping and Lodge, Inc. shall continue to charge the current monthly general service flat rate of \$23.10 per unit for Taylor Creek Condominium Association. It is further

ORDERED that Zachary Taylor Camping and Lodge, Inc. is authorized to charge \$23.10 per month for each lot and common facility in the RV Park. It is further

ORDERED Zachary Taylor Camping and Lodge, Inc. shall charge the current monthly general service flat rate and authorized monthly RV lot rate until authorized a change by this Commission in a subsequent proceeding. It is further


ORDERED within 30 days from the date of the Consummating Order, Zachary Taylor Camping and Lodge, Inc. shall provide a revised tariff reflecting its approved rates. The tariff shall be effective on the stamped approval date. It is further

ORDERED that the provisions of this Order issued as proposed agency action, except for our decision granting the certificate, 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 if no timely protest is received to our decision regarding the rates and charges, the Order will become final upon the issuance of a Consummating Order. It is further

ORDERED that the docket shall remain open pending receipt of the revised tariff sheets reflecting the approved rates. Upon receipt and verification, the docket shall be administratively closed.

By ORDER of the Florida Public Service Commission this 7th day of August, 2006.



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

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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.

As identified in the body of this order, our action regarding the rates and charges, is 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 August 28, 2006. If such a petition is filed, mediation may be available on a case-by-case 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.

Zachary Taylor Camping and Lodge, Inc.

Okeechobee County
Wastewater Service Area
Serving Zachary Taylor Camping and Lodge RV Park
and
Taylor Creek Condominium Association

Parcel 1 - Zachary Taylor Camping and Lodge

Township 37 South, Range 35 East
Section 35

Begin at the Northeast corner of Section 35, Township 37 South, Range 35 East. Thence West along the North line of said Section a distance of 520 feet to the Point of Beginning (POB). Thence continue West along the North line a distance of 420 feet to the East edge of Taylor Creek. Thence along the waters edge of Taylor Creek the following 5 courses to a Bridge used to cross State Road 15 (Connors Highway).

1. South 28° West a distance of 80 feet.
2. South 8° 30' West a distance of 270 feet.
3. South 2° West a distance of 280 feet
4. South 5° East a distance of 240 feet.
5. South 18° East a distance of 730 feet.

Thence North 75° East a distance of 200 feet along the North Right of Way line of State Road 15 (Connors Highway).

Thence North 9° West a distance of 300 feet.

Thence North 78° East a distance of 101 feet.

Thence North 8° West a distance of 60 feet.

Thence North 90° West a distance of 1,120 feet to the POB.

Parcel 2 - The Taylor Creek Condominium Association

Township 37 South, Range 35 East
Section 35

Begin at the Northeast corner of Section 35, Township 37 South, Range 35 East. Thence South along the East line of said section a distance of 1,770 feet to the Point of Beginning (POB). Thence South 89° West a distance of 150 feet.

Thence North 0° West a distance of 100 feet.

Thence South 82° West a distance of 280 feet along the South Right of Way line of State Road 15.

Thence South 0° West a distance of 20 feet.

Thence South 81° West a distance of 165 feet.

Thence South 15° East a distance of 700 feet.

Thence North 75° East a distance of 420 feet.

Thence North along the East line of said section a distance of 550 feet to the POB.