

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for amendment of Certificates 455-W and 389-S to extend water and wastewater service areas in Flagler and Volusia Counties and request for approval of special service availability agreements by Plantation Bay Utility Co.	DOCKET NO. 060165-WS ORDER NO. PSC-06-0672-PAA-WS ISSUED: August 7, 2006
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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 AMENDING CERTIFICATES  
AND  
NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING SPECIAL SERVICE AVAILABILITY AGREEMENTS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action amending certificates is final agency action and the action approving special service availability agreements discussed herein 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

Plantation Bay Utility Company (Plantation Bay or utility) is a Class B water and wastewater utility located in Flagler and Volusia Counties. Plantation Bay provides service to approximately 1,473 water and wastewater customers in Volusia and Flagler Counties. Plantation Bay is located in the St. Johns River Water Management District which is considered a priority water resource caution area. In 2005, the utility had annual operating revenues of \$410,196 for water and \$252,677 for wastewater, with a net operating income of \$63,591 for water and a net operating loss of \$97,118 for wastewater.

On February 27, 2006, the utility filed an application for an amendment to Certificate Nos. 455-W and 389-S in Flagler and Volusia Counties, Florida, pursuant to Rule 25-30.036(3),

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Florida Administrative Code. We have jurisdiction over the amendment application pursuant to Section 367.045, Florida Statutes.

The utility's amendment application also included special developer agreements. Pursuant to Rule 25-30.550(2), Florida Administrative Code, each special service availability contract must be approved by this Commission.

#### Amendment Application

A review of the amendment application shows that the application complies with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. Adequate service territory and system maps and a territory description have been provided. A description of the territory requested to be added by the utility is appended to this Order as Attachment A.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the notice were received and the time for filing such has expired. The local planning agency was provided notice of the application and did not file a protest to the amendment. The Department of Community Affairs has identified no growth management concerns with the proposed expansion of the utility. The utility states that the provision of service will be consistent with the utility section of the local comprehensive plan. The utility plans to serve a commercial area with office space that will serve about 56 equivalent residential connections (ERCs), and 75 single-family homes in the proposed area. The utility has provided a copy of a title insurance policy which provides for the continued use of the land as required by Rule 25-30.036(3)(d), Florida Administrative Code.

With respect to technical ability, the utility has engaged Wetherall Treatment Systems and provided a listing of their licensed operators and license numbers. The application states there are no outstanding Consent Orders or Notices of Violation from the Florida Department of Environmental Protection (FDEP). However, in Docket 050281-WS, a file and suspend rate proceeding, FDEP identified some water and wastewater quality of service issues. By a Proposed Agency Action Order issued in that docket, we required quarterly progress reports to be filed with the Commission and the Office of Public Counsel. That Order was protested;<sup>1</sup> however, we approved a settlement at the July 18, 2006, Agenda Conference, whereby this requirement was maintained.

Regarding the financial impact of the proposed amendment, the utility has entered into two developer agreements which are discussed below. The financial information filed with the application shows that Plantation Bay has the financial ability to serve the requested area.

Based on the above information, Plantation Bay's amendment application to add the Reserve at Flagler and Dixie Commons is approved, and the utility's territory shall be amended to add the territory described in Attachment A. The utility shall charge the customers in the

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<sup>1</sup> Order No. PSC- PSC-06-0170-PAA-WS, issued March 1, 2006, in Docket No. 050281-WS, In Re: Application for increase in water and wastewater rates in Volusia County by Plantation Bay Utility Company.

territory added herein the monthly service rates contained in its current tariff until authorized to change by this Commission.

#### Approval of Special Developer Agreements

The utility's amendment application included special developer agreements with The 84 Acres Limited Partnership and the Lighthouse Development Group, Inc. Pursuant to Rule 25-30.515(18), Florida Administrative Code, a Special Service Availability Contract is an agreement for charges for the extension of service which is not provided for in the utility's service availability policy. In addition, pursuant to Rule 25-30.550(2), Florida Administrative Code, each special service availability contract shall be approved by the Commission prior to becoming effective.

The utility proposes to require the developers to construct and donate the on-site and off-site facilities of the water distribution and wastewater collection systems to the utility. In addition, the utility requested \$3,075 per ERC in connection charges. These connection charges only apply to the developments of the Reserve at Flagler and Dixie Commons that are located outside the utility's service area.

Special developer agreements are negotiated contracts which compensate the utility for extending service to areas where the alternative is for the developer to install a smaller, less efficient independent system or install wells and septic tanks. Since these are negotiated settlements covering areas currently outside the utility's territory, they may not comport with the utility's existing tariffed charges. The utility currently has a water system capacity charge of \$635.88 plus a meter installation charge of \$100 for a total charge of \$735.88. The wastewater system capacity charge is \$530.72. The total water and wastewater system capacity charge with a meter is \$1,266.60/ERC. The system capacity charge is designed to recover the customers' share of the cost of the existing treatment plant and lines. By Order No. PSC-06-0170A-PAA-WS, in Docket No. 050281-WS, we proposed to discontinue the utility's service availability charges and require collection of donated lines beginning in 2006. Pursuant to the previously mentioned settlement approved at the July 18, 2006, Agenda Conference, "all water transmission and distribution and wastewater collection system expansions completed after March 19, 2006 shall be contributed to the Utility and booked as CIAC, and all water and wastewater system capacity charges shall be discontinued after this date."

The utility estimates that the next phase of water treatment plant improvements will cost approximately \$3,965,000, and will serve about 2,000 ERC's for a total of \$1,249 per ERC. The next phase of wastewater treatment plant improvements will cost approximately \$3,136,000, and will serve about 2,000 ERC's for a total of \$1,826 per ERC. These costs were based on a report by Quentin L. Hampton Associates, Inc. Pending the negotiations of the rate case settlement, it is unclear how this will affect the level of CIAC. Because these customers are outside the utility's certificated area, the utility states that it would not be willing to serve the new customers unless they paid their fair share of the new water and wastewater facilities.

Pursuant to Rule 25-30.550(3), Florida Administrative Code, each special service availability contract and developer's agreement shall be accompanied by a statement from the

utility affirming the current treatment plant connected load, the current treatment plant capacity, and the amount of capacity reserved under the contract. This information shows that the utility has the capacity to serve these customers.

We recognize that these developer agreements are negotiated transactions. If the special service availability agreements are not approved, and the utility declines to amend its service territory, the developers might have to provide their own water and wastewater service by building small water and wastewater plants, or installing individual wells and septic tanks, which are not the best environmental option.

Based on the above, the special developer agreements with The 84 Acres Limited Partnership and the Lighthouse Development Group, Inc. shall be approved. In the event a timely protest is filed by a substantially affected person, the total charge of \$3,075 per ERC shall remain in effect and any increased charges collected shall be held subject to refund pending resolution of the protest.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Certificate Nos. 455-W and 389-S held by Plantation Bay Utility Co. 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 Plantation Bay Utility Co. shall charge the customers in the territory added herein the monthly service rates contained in its current tariff until authorized to change by this Commission. It is further

ORDERED that the special developer agreements with The 84 Acres Limited Partnership and the Lighthouse Development Group, Inc. shall be approved as proposed agency action. It is further

ORDERED that the provisions of this Order approving the special developer agreements 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 a timely protest is filed by a substantially affected person, the \$3,075 charge per equivalent residential connection for the special developer agreements shall remain in effect, and any increased charges collected shall be held subject to refund pending resolution of the protest. It is further

ORDERED that if no protest to the approved special developer agreements is filed by a substantially affected person within 21 days of the issuance of this Order, the docket shall be closed upon issuance of a Consummating Order. If a protest is filed, the docket shall remain open pending resolution of the protest.

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

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

By:

  
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Kay Flynn, Chief  
Bureau of Records

(SEAL)

RRJ

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 approving the special developer agreements 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 amending the certificates approved as 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.

PLANTATION BAY UTILITY CO.  
WATER AND WASTEATER SERVICE AREA  
IN FLAGLER COUNTY

The Reserve at Flagler:

Township 13 South, Range 31 East, Flagler County, Florida

All of Lots 1, 2, 12 and part of Lot 11, Block "B" and all of Lots 5, 6, 7 and part of Lots 4, 8, and 9, Block "A", in Section 3, Township 13 South, Range 31 East, Bunnell Development Company Subdivision of record in Plat Book 1, Page 1, Public Records of Flagler County, Florida, more particularly described as follows:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 3, THENCE NORTH 89°02'02" EAST ALONG THE NORTH LINE OF SAID SECTION 3, A DISTANCE OF 1995.92 FEET TO THE NORTHWEST CORNER OF LOT 2 OF SAID BLOCK "B" AND THE POINT OF BEGINNING; THENCE SOUTH 01°51'39" EAST ALONG THE WEST LINES OF LOTS 2, 12 AND 11 OF SAID BLOCK "B", A DISTANCE OF 2426.62 FEET TO A POINT IN THE EASTERLY LINE OF A 100 FOOT FLORIDA POWER AND LIGHT EASEMENT; THENCE SOUTH 17°05'43" EAST ALONG SAID EASTERLY LINE A DISTANCE OF 227.06 FEET TO A POINT IN THE NORTH LINE OF OLD DIXIE HIGHWAY, A 66 FOOT RIGHT OF WAY IN THIS AREA (8-5-04); THENCE NORTH 89°25'11" EAST ALONG SAID NORTH LINE A DISTANCE OF 1189.89 FEET TO A POINT IN THE WESTERLY LINE OF STRICKLAND CANAL AS NOW LAID OUT AND USED; THENCE NORTH 06°25'36" WEST ALONG SAID WESTERLY LINE A DISTANCE OF 2666.58 FEET TO A POINT IN THE NORTH LINE OF SAID SECTION 3 AND IN THE NORTH LINE OF SAID BLOCK "A", THENCE SOUTH 89°30'36" WEST ALONG SAID NORTH LINE A DISTANCE OF 968.67 FEET TO THE NORTHWEST CORNER OF SAID BLOCK "A", SAID POINT BEING ALSO THE NORTH ONE-QUARTER CORNER OF SECTION 3; THENCE SOUTH 89°02'02" WEST ALONG THE NORTH LINE OF SAID SECTION 3 AND ALONG THE NORTH LINE OF SAID LOT 2, BLOCK "B", A DISTANCE OF 665.31 FEET TO THE POINT OF BEGINNING, CONTAINING 87.459 ACRES MORE OR LESS.

Dixie Commons, Parcels 1 and 2:

Township 13 South, Range 31 East, Flagler County, Florida

A PORTION OF LOTS 9, 10, 11 AND 12, BLOCK "A", SECTION 3, TOWNSHIP 13 SOUTH, RANGE 31 EAST, BUNNELL DEVELOPMENT COMPANY SUBDIVISION AS PER MAP OR PLAT OF RECORD IN PLAT BOOK 1, PAGE 1 PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS

FOLLOWS: AS A POINT OF REFERENCE, COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 3; THENCE S05°04'03"E ALONG THE EASTERLY LINE OF SAID SECTION 3 FOR A DISTANCE OF 2,685.39 FEET

TO THE CENTERLINE OF OLD DIXIE HIGHWAY; THENCE DEPARTING SAID EASTERLY LINE S89°23'27"W ALONG SAID CENTERLINE FOR A DISTANCE OF 1,390.77 FEET; THENCE DEPARTING SAID CENTERLINE N00°36'33"W FOR A DISTANCE OF 33.00 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF SAID OLD DIXIE HIGHWAY (A VARIABLE WIDTH RIGHT-OF-WAY) AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE S89°23'27"W ALONG SAID NORTHERLY RIGHT-OF-WAY LINE FOR A DISTANCE OF 199.60 FEET; THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY LINE N00°38'47"W FOR A DISTANCE OF 199.52 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 55.04 FEET, A RADIUS OF 52.56 FEET, A CENTRAL ANGLE OF 60°00'00", A CHORD BEARING OF N29°21'13"E AND A CHORD DISTANCE OF 52.56 FEET TO A POINT OF TANGENCY; THENCE N59°21'13"E FOR A DISTANCE OF 118.90 FEET; THENCE N59°23'27"E FOR DISTANCE OF 346.47 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 117.89 FEET, A RADIUS OF 112.58 FEET, A CENTRAL ANGLE OF 60°00'00", A CHORD BEARING OF N29°28'26"E AND A CHORD DISTANCE OF 112.58 FEET TO A POINT OF TANGENCY; THENCE N00°36'33"W FOR A DISTANCE OF 324.38 FEET; THENCE N89°23'26"E FOR A DISTANCE OF 573.05 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE 95 OFF RAMP (A LIMITED ACCESS RIGHT-OF-WAY); THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES; (1) THENCE S16°19'04"E FOR A DISTANCE OF 71.22 FEET TO A POINT OF CURVATURE; (2) THENCE ALONG A CURVE TO THE RIGHT, HAVING AN ARC LENGTH OF 1106.98 FEET, A RADIUS OF 600.00 FEET, A CENTRAL ANGLE OF 105°42'30", A CHORD BEARING OF S36°32'12"W AND A CHORD DISTANCE OF 956.52 FEET TO A POINT OF TANGENCY; (3) THENCE S89°23'27"W FOR A DISTANCE OF 300.00 FEET; (4) THENCE S00°36'33"E FOR A DISTANCE OF 69.00 FEET TO THE AFOREMENTIONED POINT OF BEGINNING.

CONTAINING 591003.45 SQUARE FEET OR 13.568 ACRES, MORE OR LESS.