BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Approval of New Class of Service to Provide for Bulk Service in Citrus County by ROLLING OAKS UTILITIES, INC.	)	DOCKET NO. 950186-WS ORDER NO. PSC-95-0730-FOF-WS ISSUED: June 20, 1995

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING SPECIAL SERVICE AVAILABILITY AGREEMENT AND NEW CLASS OF SERVICE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action 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

Rolling Oaks Utilities, Inc. (Rolling Oaks or utility) is a Class B utility providing water and wastewater service in Citrus County. The utility provides approximately 5,456 customers with water and 3,988 customers with wastewater service. In 1993, Rolling Oaks reported operating revenues of $751,936 and $925,936, and a net operating income of $45,601 and $75,493, for its water and wastewater systems respectively. Rolling Oaks is located in a Water Use Caution Area as designated by the Governing Board of the Southwest Florida Water Management District.

On February 16, 1995, a Special Service Availability Agreement between Rolling Oaks and George Wimpey of Florida, Inc. was filed with the Commission. This special service availability agreement consisted of a Bulk Service Agreement (Agreement) and an Amendment to Agreement for Provision of Potable Water Supply and Sanitary Sewage Treatment and Disposal (Amendment), both dated December 23,

1994. Along with the Agreement and Amendment, the utility requested approval for a new class of service to provide bulk service, and a proposed tariff sheet, pursuant to the provisions of the agreement.

Since the Amendment modifies the Agreement, all references to the application will be limited to the Amendment. Further, consistent with the definition of developer on Page 2, paragraph (1)(g) of the Amendment, the term developer is to include any successors, assigns, and later owners. We interpret this to include the subsequent homeowner's association.

SPECIAL SERVICE AVAILABILITY AGREEMENT

The Agreement and Amendment provide for bulk service by Rolling Oaks to two subdivision phases, which at buildout will total 269 equivalent residential connections (ERCs). According to these documents, George Wimpey, the developer, will convey to the subdivision homeowners association the on-site water and wastewater utility systems. Thus, the homeowners association will be the customer of Rolling Oaks for water and wastewater service. The developer has agreed to meter all water service connections within the subdivision phases. An application for exemption of the homeowners association from Commission regulation pursuant to Section 367.022(7), Florida Statutes, is being processed in Docket No. 950281-WS.

The purpose of this bulk service arrangement is to reduce costs of providing water and wastewater service to these subdivision phases through the elimination of the transfer of on-site facilities to the utility, and thereby eliminating the gross-up for tax impact on such transfer. There are several unique aspects of this bulk service agreement that make it different from most master metered type services. These include a billing methodology which considers the demand placed on the utility system behind the bulk meter, a wastewater gallonage cap, and a requirement by the utility that the distribution/collection system behind the master meter be maintained by the developer. We believe that through these unique measures the parties have made a diligent effort to make this type of arrangement more equitable than if the utility simply applied its general service tariff. Before discussing our concerns with the bulk service agreement and amendment, we will address the unusual features we support.

MAINTENANCE OF DEVELOPER SYSTEM

The amendment states that the developer shall enter into a service contract with an independent company from the utility for

the purpose of providing administrative and maintenance services to read meters, send bills to the consumers, receive and pay bills from the utility, and to maintain and repair the On-Site System when and as needed. This section will require the developer to contract for the continual maintenance of the distribution and collection lines in this development. Since the utility has no obligation past the point of delivery, and the developer may be found exempt from the Commission's regulation, this will further protect the individual homeowners in this development. We believe that the parties have put forth an extra effort through this clause to address the concern of upkeep and maintenance of the distribution and collection lines. Also, this provision will help to avert any misunderstandings or complaints against the utility in the future. Further, Department of Environmental Protection Rule 62-550.540, Florida Administrative Code, requires the continuing monitoring of contaminants by consecutive public water systems. Therefore, we find that this section is an acceptable solution to future maintenance problems.

WASTEWATER GALLONAGE CAP

The amendment and the charges proposed for wastewater service do not include a gallonage cap. Therefore, the development is being considered a general service customer and is billed for wastewater service based on the total amount of water used. If each of the residential customers behind the master meter were served by Rolling Oaks individually, a maximum of 6,000 gallons of water usage would be included in the wastewater gallonage charge. This recognizes that usage above this cap is usually used for purpose such as irrigation or washing vehicles when the water does not return to the wastewater system. Since the developer will be billed under a rate similar to the general service rate, the wastewater customers behind the master meter will pay a higher wastewater gallonage charge than other residential customers, as they will be billed based on 100% of their usage. On page 8 paragraph 6(f), of the original agreement, the parties stated that the Utility would be willing to accept a cap on the usage charges for sewer service if this cap were the sole revision proposed by the Commission. We were informed by the parties that this "acceptance statement" was inadvertently omitted from the Amendment, therefore we believe that the parties may not be opposed to this proposed cap in the suggested revisions.

As mentioned above, we support the underlying purpose of this bulk service agreement. Further, we are not opposed to utility companies and developers seeking legal methods in avoiding the payment of taxes on CIAC. However, there are several provisions in the Agreement and Amendment that make them unacceptable and force

us to deny Rolling Oaks' application. We recognize that the parties have engaged in negotiations prior to submitting the proposed amendment, and would recommend that the parties continue their negotiations in order to reach an acceptable bulk service agreement. We recommend to the parties that any future agreement be reviewed with our staff in order to facilitate our review and acceptance. The reasons for our denial of the application are discussed in detail below.

BASE FACILITY CHARGES

A utility's base facility charge is designed to recover fixed costs associated with the source of water supply, and maintenance of the water and wastewater treatment plants and lines. These expenses include plant maintenance, depreciation and amortization, taxes, insurance, salaries and benefits, insurance and other related expenses. Base facility charges allow the utility to recover these fixed costs, regardless of usage. Pages 5-6, paragraph 7(a) of the Amendment, proposes a base facility charge set out to be the greater of either, the General Service base charge for an 8" meter, or the sum of the base facility charges for a 5/8" x 3/4" meter for the total number of Equivalent Residential Connections (ERCs) behind the 8" meter for any given month.

The purpose of this type of billing arrangement is to more accurately measure the demand that will be placed on the utility's water and wastewater systems behind the bulk meter. The General Service base facility charge for an 8" meter is based on the AWWA meter equivalent factor of 80, which is equivalent to 80 ERCs receiving service behind the master meter. However, at buildout, there will be 269 ERCs served behind the 8" master meter. Thus, a base facility charge based solely on the size of the meter serving the development phases would not be an accurate measure of the demand placed on the utility's system. The result would be that the utility would collect too much base facility charge revenue in the initial period of development until more than 80 ERCs are receiving service behind the master meter. When more than 80 ERCs are connected to the system, the utility would not be collecting sufficient revenue from the general service base facility charge. Therefore, we agree that determining the base facility charge on the number of ERCs behind the bulk service meter is an appropriate billing methodology in this case.

Our practice has been to establish a bulk service rate only after it is determined that the class of service is truly unique and is not similar to other existing classes of service served by the utility. We believe that this arrangement would qualify as a bulk service class. However, we do not believe that the use of the

entire base facility charge for a 5/8" x 3/4" meter as proposed by Rolling Oaks would be appropriate.

Historically, we have approved bulk service charges that recognize differences in cost and minimizes any form of cross subsidization among or between the various classes served by the utility. In this arrangement, there are virtually no differences in costs of source, treatment/pumping, and disposal regarding water or wastewater service. The difference lies in the level of transmission and distribution, collection, and general plant utilized in getting water to and wastewater from the customer. Page 10, paragraph 10(a) of the amendment, states that the developer shall enter into a service contract with an independent company from the utility for the purpose of providing administrative and maintenance services to read meters, send bills to the consumers, receive and pay bills from the utility, and maintain and repair the On-Site System when and as needed. Since the developer will be responsible for maintaining the distribution and collection lines in the proposed development, as well as meter reading and billing, the bulk service charge should reflect this reduction in costs.

By Order No. 17269, issued March 10, 1987, we approved a bulk service arrangement for water service between Martin Downs Utilities, Inc. and Martin County. The base facility charge was similar to the one proposed by Rolling Oaks, with one exception. The base facility charge for Martin County was based on the number of ERCs actually connected multiplied by 80%. The Order states, "The 20% reduction in the base facility charge reflects the savings to the utility in billing and bookkeeping, as well as the maintenance responsibility for the mains on the discharged side of the master meter." We believe that a base facility charge using this type of methodology should be used in this case. The amount of the base facility charge should be negotiated by the parties and based on the savings to the utility in maintenance and administrative costs as well as the cost of implementing this type of billing arrangement.

Based on the above analysis, we believe that it would be appropriate for Rolling Oaks to resubmit a bulk service agreement and the corresponding proposed tariff sheets reflecting the actual cost to serve George Wimpey, including a gallonage cap for the wastewater service. Our staff is willing to work with the utility to establish the appropriate charge.

REPORTING REQUIREMENTS OF DEVELOPER/HOMEOWNERS ASSOCIATION

The implementation of this rate system would require reporting by developer to the Utility on a monthly basis the exact number of ERCs on the developer's side of the Bulk Service meter. Page 6, paragraph 7(d), of the Amendment states that the developer agrees to provide a listing, to the Utility by the twentieth day of each month, of the number of ERCs then receiving service as of the fifteenth of that month through the Bulk Service meter and within the On-Site System.

Page 7, paragraph 7(e) of the Amendment, gives the utility the right to backbill the developer at any time for previous under-billings due to the developer's inaccuracy of the monthly reports (containing the number and size of connections receiving service through the Point of Delivery). This backbilling proposes to include 10% per annum interest and a penalty equal to 50% of the backbilled amount. The developer is also responsible for all engineering, accounting and legal fees incurred by the utility in determining the existence of the under-billing. If the backbilled amount, interest, and penalty is not paid within twenty days of written demand, the Utility reserves the right to disconnect service and to refuse service to any new installation.

Rule 25-30.350, Florida Administrative Code, addresses backbilling of customers due to the utility's error. However, we believe this rule does not apply in this instance since the backbilling would be a direct result of the developer. We agree that a penalty might be appropriate in this instance in order to provide an incentive to the developer to accurately represent the current number of ERCs. However, we believe that a penalty of 50% of the backbilled amount plus 10% per annum interest is excessive, and that the parties should make an effort to determine a more appropriate penalty.

DISCONTINUANCE OF SERVICE PROVISIONS

As noted above, pursuant to paragraph 7(e) of the Amendment, the Utility reserves the right to disconnect service and to refuse service to any new installation if the backbilled amount, interest, and penalty is not paid within twenty days of written demand. In addition to this paragraph, there are four other paragraphs in the Amendment which allow the utility to discontinue service to the development.

Page 8, paragraph 8 of the Amendment, provides that the utility reserve capacity for the development equal to 94,150 gallons per day for water and wastewater, representing 269 ERCs.

To the extent that the developer's use exceeds either the ERC or gallonage limitations, the utility may notify developer of additional requirements, including system capacity charges, other service availability charges, and any cost of inspection and enforcement related to the utility's legal and engineering fees. If the developer fails to pay these charges in 10 days, the utility reserves the right to disconnect all service to the developer and to refuse to connect any further services requested by or through the developer.

Page 11, paragraph 10(e) of the Amendment, provides that the utility may inspect the developer's on-site system at any reasonable time to determine that system is properly operated and maintained. To the extent the utility finds a problem, the utility may inform the developer and require the developer to make any repair. Refusal of the developer to make such improvement shall be "tantamount" to refusal to pay for utility services and authorizes all reasonable measures, including discontinuance of service and refusal to provide any further service pending the correction of the problems.

Pages 11-12, paragraph 10(f) of the Amendment, relates to paragraph 10(e) in the event that the utility notifies the developer of such problems, the developer may have 10 days to respond to the notification if it believes that the problems are other than as stated by utility. If the parties cannot reach agreement among its Professional Engineers (PE), then a third PE may be selected to arbitrate the matter and render a decision. Such decision shall be binding on both parties and the cost of obtaining the services of the third party PE shall be borne by the party with whom this third PE disagrees. Failure to pay the costs of this third PE by the developer shall also constitute a violation and default and constitute basis for the utility to discontinue service.

Page 16, paragraph 13 of the Amendment, provides that the Utility will charge the developer all costs and expenses, such as legal, engineering, and accounting, associated with negotiating, drafting, executing, and complying with the Amendment. To the extent the developer fails to pay such costs, the utility may cease provision of bulk services and disconnect any and all existing connections of developer receiving service and refuse any further connections.

Although these provisions are designed to protect the utility from non-compliance with the terms of the agreement by the developer, discontinuance of service is too severe a penalty and not in the public interest. The result of these provisions is that

water service to the homeowners receiving service from the master meter could be discontinued through no fault of their own. We recognize that these individual homeowners will not be customers of Rolling Oaks but rather of another, perhaps exempt, utility. However, discontinuance of service to this master meter would not be practical and could cause numerous problems resulting in confusion and misunderstanding on the part of the homeowners. We believe that the parties should find other remedies available to the utility to ensure compliance with the provisions of the Amendment which are more reasonable and equitable to the ultimate homeowners.

Further, we believe that three of these paragraphs in the Amendment are in direct violation of Rule 25-30.320(2)(g), Florida Administrative Code. This rule addresses refusal or discontinuance of water or wastewater services for either non-payment of the water or wastewater bill or noncompliance with the utility's rules and regulations. The only paragraph that conforms to this rule is page 11, paragraph 10(e) of the Amendment.

Also, with regard to paragraph 7(e), relating to the failure of the developer to file timely and accurate reports of connections behind the master meter, the utility should be allowed to estimate the number of connections for billing purposes for those months that the developer fails to timely file the reports. If the reports submitted by the developer are found to be inaccurate, the backbilling provision allowed by Rule 25-30.350, Florida Administrative Code, could be used to collect the under-billings. With regard to the remaining paragraphs allowing for discontinuance of service at the master meter, we believe that the utility possibly should be allowed to assess some reasonable penalty for noncompliance as an incentive to the developer. We believe that it is important that the utility have some reasonable measures to ensure compliance with the provisions of the agreement. Our staff is willing to work with the parties in an effort to find such reasonable measures.

Finally, while we agree with the intent and purpose of the bulk service agreement and amendment thereto, we do not believe that it would be in the long-run best interest of the customers, both current and future, to approve them as filed. Therefore, the Bulk Service Agreement and the Amendment to Agreement for Provision of Potable Water Supply and Sanitary Sewage Treatment and Disposal between Rolling Oaks Utilities, Inc. and George Wimpey of Florida, Inc. are hereby denied as filed. Further, the request for a new class of service to provide bulk service, and the proposed tariff sheet, pursuant to the provisions of the agreement and amendment is hereby denied. However, the parties are encouraged to address the

concerns outlined herein and file another proposed Bulk Service Agreement and tariff sheets within 90 days of the issuance of this Order. If the parties are unwilling or unable to reach another agreement within that time, then upon expiration of the protest period, this docket shall be closed administratively.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the Bulk Service Agreement and the Amendment to Agreement for Provision of Potable Water Supply and Sanitary Sewage Treatment and Disposal between Rolling Oaks Utilities, Inc. and George Wimpey of Florida, Inc. are hereby denied. It is further

ORDERED that the request for a new class of service to provide bulk service, and the proposed tariff sheet, pursuant to the provisions of the agreement and amendment is hereby denied. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that if the Rolling Oaks Utilities, Inc. and George Wimpey of Florida, Inc. do not file another agreement within 90 days of this Order, upon expiration of the protest period, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission, this 20th day of June, 1995.

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BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 11, 1995.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 Records and Reporting 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 of the effective date 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.