

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

APRIL 24, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (BRADY, GOLDEN)^{50m} *mas* *pb* *gcyb*
DIVISION OF LEGAL SERVICES (CROSBY) *HT*

RE: DOCKET NO. 960244-WU - HOLMES UTILITIES, INC. -
APPLICATION FOR CERTIFICATE TO PROVIDE WATER SERVICE IN
HIGHLANDS COUNTY BY HOLMES UTILITIES, INC.
COUNTY: HIGHLANDS

AGENDA: MAY 6, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\960244WU.DCM

DOCUMENT NUMBER-DATE

04164 APR 24 97

FPSO-RECORDS/REPORTING

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CASE BACKGROUND

Holmes Utilities, Inc. (Holmes Utilities or utility) is an existing Class C utility located in Highlands County. The utility is currently providing water service to 37 single family residences and one clubhouse in the Country Walk Subdivision. In 1995, the utility had annual operating revenues of \$1,878 and a net operating loss of \$8,768. At buildout, the utility anticipates serving 89 single family residences and one clubhouse.

On February 27, 1996, Holmes Utilities filed an application for a certificate to provide water service in Highlands County. The utility's application was found to be deficient. The utility corrected the deficiencies on March 7, 1997.

The utility was established in 1987. The utility facilities consist of one water treatment plant and one water transmission and distribution system. Wastewater service is provided by septic tanks. According to the application, the current owners purchased the system on August 1, 1995, and were not aware at that time that the system would be regulated by the Public Service Commission (Commission or PSC.) Staff subsequently learned of the utility's existence following an inquiry from one of the utility's customers regarding whether or not the system should be regulated by the PSC. After being informed that it was subject to PSC jurisdiction and in violation of Section 367.031, Florida Statutes, the utility promptly filed this application for a water certificate. The following is staff's recommendation regarding the utility's request for an original water certificate.

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ISSUE 1: Should the Commission order Holmes Utilities, Inc. to show cause, in writing within twenty days, why it should not be fined for violation of Section 367.031, Florida Statutes.

RECOMMENDATION: No, show cause proceedings should not be initiated. (CROSBY)

STAFF ANALYSIS: As stated in the case background, Holmes Utilities, Inc. is in apparent violation of Section 367.031, Florida Statutes, which states, in part, "Each utility subject to the jurisdiction of the commission must obtain . . . a certificate of authorization to provide water or wastewater service." The system has been in existence since 1987 and has been providing water service without a certificate since that time. Holmes Utilities has been providing water service to the residents of Country Walk Subdivision without a certificate since it purchased the system in August of 1995. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, Florida Statutes, authorizes the Commission 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 provision of Chapter 367, Florida Statutes. 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, F.A.C., 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 it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure of Holmes Utilities to obtain a certificate prior to providing service appears to be due to lack of knowledge of the statutes and Commission rules. Holmes Utilities became aware of this Commission's regulation and of the necessity to obtain a certificate when it was contacted by the Commission staff as the result of an inquiry from a customer regarding whether or not the utility was jurisdictional. The application was filed by the utility shortly after it was contacted by staff.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, staff does not believe that the violation of Section 367.031, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Holmes Utilities filed the application upon becoming aware of the Commission's jurisdiction, which was a only few months

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after purchase of the utility. In addition, the utility has been very responsive to staff's requests for information. Therefore, staff recommends that the Commission not order Holmes Utilities to show cause for failing to obtain a certificate prior to providing water service.

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ISSUE 2: Should the application of Holmes Utilities, Inc. for a water certificate be granted?

RECOMMENDATION: Yes, Holmes Utilities, Inc. should be granted Water Certificate No. 579-W to serve the territory described in Attachment A. (BRADY, GOLDEN)

STAFF ANALYSIS: On February 27, 1996, Holmes Utilities, Inc. filed its application for a certificate to provide water service in Highlands County. The application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for an original certificate for an existing utility currently charging for service. The application contains a check in the amount of \$750 which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. Also, the applicant has provided evidence that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.034(1)(e), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.034(1)(h),(i) and (j), Florida Administrative Code. A description of the territory requested by the applicant is appended to this memorandum 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, including notice to the customers in the proposed territory. No objections to the notice of application have been received and the time for filing such has expired.

Regarding the applicant's financial and technical ability, the application states that the utility has 100% financial and technical backing from the owners' company, Pugh Utilities Services, Inc. (Pugh Utilities or company.) Pugh Utilities was established in 1979 and was incorporated on September 1, 1995. According to the application, the company has a net worth of \$350,000. Pugh Utilities works with the owners and managers of 85 other water and wastewater facilities, along with two Florida Department of Environmental Protection (DEP) districts. The application states that the owners and employees of Pugh Utilities have over 100 combined years of water and wastewater experience.

Staff has contacted the DEP and learned that the utility's water facilities are in satisfactory condition and there are no outstanding violations. However, the utility is experiencing a

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problem with copper sulfide and iron sulfide which we believe the Commission should be aware of for future reference. The problem occurs when sulfur, which is naturally occurring in water, reacts with the copper and iron in the customers' pipes. According to DEP, the utility is in compliance with DEP's standards regarding these secondary contaminants. These contaminants do not pose a health risk to the customers, but are recognized as an aesthetic problem in the quality of the water. Therefore, based upon DEP's recommendation, the utility has attempted to correct the problem by injecting an inhibitor into the water. This is the least costly method available to correct the problem. According to the DEP representative, this has helped but has not eliminated the problem.

There are two additional alternatives which the utility may use to correct the problem. First, the utility could increase the size and depth of the well to reach a deeper source of water which may not contain the same level of sulfur. The DEP representative estimates that this would cost approximately \$10,000. Second, the utility could install a filtration system on the well. This would cost approximately \$20,000 to \$50,000. However, there is no guarantee that either of these alternatives would correct the problem.

The DEP representative met with the customers last year to discuss the problem and possible solutions. Nineteen customers attended the meeting. Approximately half of the customers indicated they would be willing to pay higher rates in order to correct the problem. However, some of the customers have already installed home filtration systems and are not willing to incur any additional cost.

Because the utility is in compliance with DEP's standards and the contaminants do not pose a health risk, DEP cannot require the utility to implement either of these methods at this time. Additionally, to date, the Commission has not received any complaints from the utility's customers. The utility's owner informed staff that the utility plans to conduct additional testing to monitor the problem. In consideration of these facts, staff does not believe any action by the Commission is necessary at this time. However, as stated earlier, staff believes the Commission should be aware of this situation in the event it is raised by the customers or utility in future proceedings before this Commission.

Based on the above information, staff believes it is in the public interest to grant the application for an original water certificate. Accordingly, staff recommends that Holmes Utilities,

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Inc. be granted Water Certificate No. 579-W to serve the territory described in Attachment A.

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ISSUE 3: What rates and charges should be approved for this utility?

RECOMMENDATION: The existing rates and charges as detailed in the staff analysis should be approved. The effective date of the rates should be the stamped approval date of the tariff. (GOLDEN)

STAFF ANALYSIS: The utility's present water rates and charges are as follows:

Monthly Service Rates

Residential and General Service

Base Facility Charge

Meter Size:

5/8" x 3/4" \$ 8.00

Gallonage Charge per 1,000 gallons:

0- 5,000 gallons	\$ 1.40
5,001-10,000 gallons	\$ 1.70
10,001-15,000 gallons	\$ 2.00
Over 15,000 gallons	Gallonage Charge increases by \$0.30 for each 5,000 gallon block over 15,000 gallons

Typical Residential Bills

3M	\$ 12.20
5M	\$ 15.00
10M	\$ 23.50

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Miscellaneous Service Charges

Initial Connection Fee	\$ 15.00
Normal Reconnection Fee	\$ 15.00
Violation Reconnection Fee	\$ 15.00
Premises Visit Fee (in lieu of disconnection)	\$ 10.00

Service Availability Charges

Customer Connection (Tap-in) Charge 5/8" x 3/4" Meter	\$550.00
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The current rates and charges became effective in August of 1995, when the current owners purchased the system. The prior owners charged a flat rate of \$10 per month. The utility's service availability policy states that there is water available to each lot within the Country Walk Subdivision, and that there will be a tap-in fee of \$550.00 for all new single family homes.

Although it is not common to see an inclining block rate structure with this many blocks, staff believes the overall rates and charges are reasonable in comparison to other utilities regulated by this Commission. Therefore, staff recommends that the utility should be required to continue charging these rates and charges until authorized to change by the Commission. The utility has filed a tariff which reflects the above rates and charges. The effective date of the tariff should be the stamped approval date.

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ISSUE 4: Should the utility be required to pay regulatory assessment fees for 1995 and 1996 and file an Annual Report for 1996 with the Commission?

RECOMMENDATION: Yes, the utility should be required to remit regulatory assessment fees for 1995, from September 1, 1995 through December 31, 1995. Further, the utility should be required to remit regulatory assessment fees and file an Annual Report for all of 1996. The regulatory assessment fees and Annual Report should be filed within 45 days of the issuance date of the Order.
(GOLDEN)

STAFF ANALYSIS: Pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code, Annual Reports and regulatory assessment fees are due from regulated utilities regardless of whether a certificate has been granted. The utility has been subject to this Commission's jurisdiction since it was established in 1987, although staff did not learn of its existence until 1995. Holmes Utilities was advised of the Commission's jurisdiction and its responsibility to obtain a certificate in September of 1995. A representative of the utility indicated to staff that the utility is prepared to pay the regulatory assessment fees at this time, and requested the documents to do so. The utility previously filed an Annual Report for 1995 and has requested the forms to file an Annual Report for 1996.

Accordingly, staff recommends that the utility should be required to remit regulatory assessment fees for 1995, from September 1, 1995 through December 31, 1995. Further, staff recommends that the utility should be required to remit regulatory assessment fees and file an Annual Report for all of 1996. Staff recommends the utility be given 45 days in which to file these items.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes. (CROSBY)

STAFF ANALYSIS: No further action is required in this docket and it can be closed.

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ATTACHMENT A

HOLMES UTILITIES, INC.

HIGHLANDS COUNTY

TERRITORY DESCRIPTION

Township 36 South, Range 29 East, Section 16

Begin at the NW corner of the SW 1/4 of the SW 1/4 of said Section 16; thence

- N 88°22'50" E, along the North line of the said SW 1/4 of the SW 1/4 for a distance of 1,328.55 feet to a point marking the NE corner of the SW 1/4 of the SW 1/4 of Section 16, Township 36 South, Range 29 East; thence run
- S 00°02'11" E, along the East line of the SW 1/4 of the SW 1/4 for a distance of 1,272.47 feet to a point on the Government Meander Line of Lake Carrie; thence run
- S 78°27'29" W, a distance of 273.91 feet along said Government Meander Line to a point; thence run
- S 88°22'28" W, a distance of 1,055.35 feet to the SW corner of Section 16, Township 36 South, Range 29 East; thence run
- N 00°14'24" W, a distance of 1,319.68 feet to the Point of Beginning.

Said portion containing 40.02 acres, more or less.