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M E M O R A N D U M

AUGUST 6, 1997

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

FROM: DIVISION OF WATER & WASTEWATER (WALKER, *WJW* *LEE*)
DIVISION OF LEGAL SERVICES (CROSSBY) *LSC*

RE: DOCKET NO. [REDACTED] - APPLICATION FOR CERTIFICATES UNDER
THE GRANDFATHER RIGHTS TO PROVIDE WATER AND WASTEWATER
SERVICE BY CRYSTAL RIVER UTILITIES, INC. IN POLK COUNTY
COUNTY: POLK

AGENDA: AUGUST 18, 1997 - REGULAR AGENDA - PROPOSED AGENCY ACTION
ON ISSUE 2 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

LOCATION OF FILE: S:\PSC\NRM\NP\961014.RCM

DOCUMENT NUMBER-DATE

07347 AUG-65

FPSC-RECORDS/REPORTING

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CASE BACKGROUND

On May 14, 1996, the Board of County Commissioners of Polk County adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring that privately owned water and wastewater utilities in that county were subject to the provisions of Chapter 367, Florida Statutes. The resolution was acknowledged by this Commission on July 11, 1996, by Order No. PSC-96-0896-FOF-WS. Pursuant to Section 367.171, Florida Statutes, a utility subject to the jurisdiction of this Commission must obtain a certificate of authorization.

On September 3, 1996, Crystal River Utilities, Inc. (Crystal River) filed an application to secure grandfather certificates for its water and wastewater system in Polk County. This system, which serves about 84 residential customers, was owned by Rosalie Oaks Utility Corporation (Rosalie Oaks) when Commission jurisdiction was invoked. Crystal River purchased the Rosalie Oaks system per an agreement which was signed on August 14, 1996, but final closing of the contract was held subject to this Commission's consent. Crystal River agreed to pay \$35,000 for the Rosalie Oaks system. To eliminate duplicate filings, an application for grandfather certificates immediately followed by a transfer proceeding, Crystal River asked the Commission to issue grandfather certificates in its name. Assorted prerequisite filing matters concerning maps and territory descriptions were recently completed.

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. This system has been subject to this Commission's jurisdiction since May 14, 1996.

This recommendation addresses Crystal River's application for grandfather certificates in Polk County. Also addressed is the transfer of the utility from Rosalie Oaks to Crystal River, and Rosalie Oaks' apparent violation of Section 367.071, Florida Statutes.

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ISSUE 1: Should Rosalie Oaks Utility Corporation be ordered to show cause, in writing within 20 days, why it should not be fined for violation of Section 367.071, Florida Statutes?

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

STAFF ANALYSIS: As stated in the case background, Rosalie Oaks Utility Corporation is in apparent violation of Sections 367.071, Florida Statutes, which states, in part, "No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof . . . without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest. Rosalie Oaks and Crystal River entered into agreement for the sale of the system to Crystal River on August 14, 1996. Crystal River has been operating the system providing water and wastewater service to customers of the utility since that time. 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 25-14.001, 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.

Rosalie Oaks failed to obtain Commission approval before entering into the contract for sale and turning the system over to Crystal River to operate. Section 14(a) and (b) of the sales agreement, which was signed by Rosalie Oaks and Crystal River in August, 1996, deals with Florida Public Service Commission matters. Section 14(a) states, in part, "Prior to Closing. Purchaser shall submit an application to the Florida Public Service Commission (FPSC) to issue a certificate of authorization . . ." Section 14(b) states, in part, ". . . In the event the FPSC does not approve the application for transfer . . ., the agreement shall be terminated." Although technically, Crystal River did not file an application for transfer prior to entering into this contract and assuming operation of the utility system, from our review of the agreement and conversations with Crystal River, the closing of the sale is contingent upon Commission approval of the sale and issuance of certificates to Crystal River. Failure of Rosalie Oaks to obtain prior approval of the Commission appears to be due to its

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belief that because the sale had not closed, it was not in violation of Section 367.071, Florida Statutes.

Staff has reviewed the application and the sales agreement and, although Crystal River has been operating the utility since the agreement was signed in August of 1996, closing of the sale is conditioned upon Commission approval. Therefore, staff does not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Staff recommends that the Commission not order Rosalie Oaks to show cause for failing to obtain Commission approval prior to the transfer of the utility to Crystal River.

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ISSUE 2: Should the application of Crystal River for a grandfather certificate in Polk County be granted?

RECOMMENDATION: Yes, Crystal River should be granted Water Certificate No. 594-W and Wastewater Certificate No. 510-S. Crystal River should be ordered to provide notice of the action taken at this agenda conference within seven days of the issuance date of the Proposed Agency Action Order issued in this Docket to the groups identified below in the Staff Analysis. Crystal River should also be ordered to notice once in a newspaper of general circulation in the service area. Further, the utility should be ordered to submit a warranty deed within 60 days of the issuance date of the order, resulting from the action taken at this agenda conference, showing that ownership of the treatment plant sites has been properly conveyed to Crystal River. (WALKER, REDEMANN, CROSBY)

STAFF ANALYSIS: As discussed in the case background, the Board of County Commissioners of Polk County transferred jurisdiction of the privately owned water and wastewater utilities in Polk County to this Commission on May 14, 1996. At that time, this system was owned by Rosalie Oaks. On August 14, 1996, Rosalie Oaks entered into an agreement to sell the system to Crystal River prior to Commission approval, as discussed in Issue 1. On September 3, 1996, Crystal River applied for a grandfather certificate to provide service in Polk County, in accordance with Section 367.171(2)(b), Florida Statutes. The application is in compliance with the governing statute, Section 367.171, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for a grandfather certificate. The application contains a check in the amount of \$200, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

The rules and statute do not require noticing for grandfather certificate applications. However, since a transfer took place prior to the issuance of the grandfather certificates, Staff believes that the Commission should make this a proposed agency action issue and require Crystal River to notice the customers, the Office of the Public Counsel, and the Polk County Commission, of the PAA order within seven days of issuance of the order. This treatment is consistent with Order No. 19848, issued August 22, 1988, in Docket No. 880013-WS, Application of Homosassa Utilities, Inc. for water and sewer certificates under grandfather rights, Sumter County, Florida, wherein the Commission granted Homosassa Utilities, Inc. grandfather certificates and required the utility to provide a copy of the PAA order to the Office of the Public Counsel, the Sumter County Commission, the Withlacoochee Regional Planning Council and the customers of the utility. The Order also

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required Homosassa Utilities, Inc. to notice in a newspaper of general circulation in the service territory.

Rule 25-30.035(6), Florida Administrative Code, requires a utility to provide proof that it owns the land or has continued use of the land upon which its facilities are located. Crystal River provided a copy of a warranty deed that includes areas that are designated for its water and wastewater treatment plants. However, the deeds are currently listed in Rosalie Oak's name. Crystal River's purchase of the Rosalie Oaks system should be complete when the grandfather certificates are issued. We believe the plant site documents should specify that Crystal River is the owner. Accordingly, we recommend that Crystal River should be ordered to submit the required ownership documents within 60 days of the order issue date.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.035(9), (10), and (11), Florida Administrative Code. A description of the territory requested by the applicant is appended to this memorandum as Attachment A. Staff has contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation.

This system is current with respect to payment of regulatory assessment fees and submission of annual reports through 1996. Crystal River will pay all of the utility's regulatory assessment fees for 1997.

Based on the above information, staff recommends that Crystal River be granted Water Certificate No. 594-W and Wastewater Certificate No. 510-S to serve the territory described in Attachment A. In addition, since it could be argued that the application should have been filed as an application for original certificates, staff recommends that this Issue be PAA and that Crystal River be required to send a copy of the order within seven days of the issuance to the Polk County Commission, and the Office of the Public Counsel. Staff further recommends that Crystal River be required to publish the notice, as shown on Attachment B, once in a newspaper of general circulation in the service territory. In addition, Staff recommends that Crystal River be required to provide a copy of the notice to its customers within seven days of the issuance of the order.

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ATTACHMENT A

**CRYSTAL RIVER UTILITIES, INC.
WATER AND WASTEWATER SERVICE AREA
FOLK COUNTY**

THE ROSALIE OAKS SUBDIVISION

N 79° 24' 10" W , 908.44 feet to the centerline of Camp Mack Road; thence along said centerline, S 50° 09' 10" W, 123.40 feet to the beginning of a curve to the left having a central angle of 8° 47' 20" and a radius of 2752.18 feet; thence along said curve, for an arc length of 422.17 feet to the end of said curve; thence S 41° 21' 50" W, 143.88 feet; thence S 35° 24' 10" E, 51.36 feet to the POINT OF BEGINNING for this description; from said P.O.B., continue thence S 35° 24' 10" E, 134.10 feet to the beginning of a curve to the left having a central angle of 90° 00' 00" and a radius of 20 feet; thence along said curve for an arc length of 31.42 feet to the end of said curve; thence N 54° 35' 50" E, 100.00 feet; thence S 35° 24' 10" E, 175.00 feet; thence N 54° 35' 50" E, 200.00 feet; thence N 35° 24' 10" W, 115.00 feet; thence N 54° 35' 50" E, 320.95 feet to the beginning of a curve to the right having a central angle of 46° 00' 00" and a radius of 205.58 feet; thence along said curve, for an arc length of 165.05 feet, to the end of said curve; thence S 79° 24' 10" E, 110.01 feet to the beginning of a curve to the right having a central angle of 134° 00' 00" and a radius of 51.98 feet; thence along said curve for an arc length of 121.57 feet to the end of said curve; thence S 35° 24' 10" E, 185.00 feet; thence S 54° 35' 50" W, 707.86 feet, thence S 35° 24' 10" E, 72.74 feet; thence S 69° 24' 10" E, 148.94 feet; thence N 20° 35' 50" E, 10.00 feet to the beginning of a curve to the right, whose tangent bears S 69° 18' 44" E, and has a central angle of 21° 52' 22" and a radius of 3180.00 feet; thence along said curve, southeasterly, for an arc length of 1213.97 feet to the end of said curve, and the beginning of a curve to the left having a central angle of 22° 50' 30" and a radius of 260.00 feet; thence along said curve for an arc length of 103.65 feet, to the end of said curve, thence S 70° 16' 52" E, 706.24 feet; thence S 10° 16' 52" E, 400.69 feet; thence N 73° 24' 00" W, 870.32 feet to the beginning of a curve to the right having a central angle of 25° 57' 38" and a radius of 655.00 feet; thence along said curve for an arc length of 296.78 feet to the end of said curve, and the beginning of a curve to the left having a central angle of 21° 57' 48" and a radius of 2785.00 feet; thence along said curve for an arc length of 1067.58 feet to the end of said curve, thence N 69° 24' 10" W, 342.13 feet; thence N 35° 24' 10" W, 538.72 feet; thence N 54° 35' 50" E, 210.00 feet; thence N 35° 24' 10" W, 190.58 feet; thence N 41° 21' 50" E, 102.73 feet to the P.O.B.

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ROSALIE OAKS WATER TREATMENT PLANT

ALSO, Commence at the Northeast corner of Section 29, Township 29 South, Range 29 East, Polk County, Florida and run South along the East boundary of Section 29, 1566.41 feet; thence N 79° 24' 10" W, 908.44 feet to the centerline of Camp Mack Road; thence along said centerline. S 50° 09' 10" W, 123.40 feet to the beginning of a curve to the left having a central angle of 8° 47' 20" and a radius of 2752.18 feet, thence along said curve, for an arc length of 422.17 feet to the end of said curve; thence S 41° 21' 50" W, 306.72 feet; thence S 53° 24' 20" W, 420.00 feet; thence S 36° 35' 40" E, 50.00 feet to the POINT OF BEGINNING for this description; from said P.O.B., continue thence S 36° 35' 40" E, 208.71 feet; thence S 53° 24' 20" W, 208.71 feet; thence N 36° 35' 40" W, 208.71 feet; thence N 53° 24' 20" E, 208.71 feet to the P.O.B.

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

RECOMMENDATION: The rates and charges that are detailed in the staff analysis should be approved. The tariff should be effective for services rendered or connections made on or after the stamped approval date of the tariff. (WALKER)

STAFF ANALYSIS: On February 18, 1991, the Polk County Board of County Commissioners approved a resolution establishing water and wastewater rates and charges for Rosalie Oaks. Crystal River proposed adoption of those rates in its application. However, on January 2, 1997, the Commission approved a pass-through rate adjustment for this utility to allow recovery of increased expenses due to payment of regulatory assessment fees. The recommended rates, with the added provision for regulatory assessment fees, are shown below.

Monthly Service Rates

Water Division:

Residential Service:

Base Facility Charge:	<u>Amount</u>
3/4 X 5/8"	\$ 9.90
1"	\$ 21.31
2"	\$ 68.38
Gallage Charge: (per 1,000 Gallons)	
0 - 5,000 Gallons	\$.84
5,001 - 10,000 Gallons	\$ 1.05
Over 10,000 Gallons	\$ 1.26

Wastewater Division:

Residential Service:

Base Facility Charge:	<u>Amount</u>
3/4 X 5/8"	\$ 13.30
1"	\$ 23.77
2"	\$101.31
Gallage Charge - All Flows	\$ 5.71

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Customer Deposits

	<u>Water</u>	<u>Wastewater</u>	<u>Total</u>
Residential Service	\$25	\$25	\$50

Water Test Deposits

<u>Meter Size:</u>	<u>Charge</u>
5/8 x 3/4"	\$ 15.00
1" and 1 1/2"	\$ 20.00
2" and over	\$ 30.00

Miscellaneous Service Charges

Initial Connection Fee:	\$ 15.00
Normal Reconnection Fee:	\$ 15.00
Violation Reconnection Fee:	\$ 15.00 (or Actual Cost)
Premises Visit Fee:	\$ 15.00

Water Installation Fees

5/8" x 3/4" meter	\$200.00
1" meter	\$200.00
1 1/2" meter	\$200.00
2" meter	\$600.00
Over 2" meter	Actual Cost

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Customer Connection (Tap-in) Charges

	<u>Water</u>	<u>Wastewater</u>	<u>Total</u>
5/8" x 3/4" meter	\$200.00	\$600.00	\$800.00
1" meter	\$330.00	\$600.00	\$930.00
1 1/2" meter	\$330.00	\$600.00	\$930.00
2" meter	\$1,000.00	\$600.00	\$1,600.00
Over 2" meter	Actual Cost	Actual Cost	Actual Cost

The utility has filed a tariff which reflects the above rates and charges. Staff recommends that they be approved as submitted. Staff further recommends that Crystal River be required to continue to charge these rates and charges until authorized to change by the Commission. The tariff should be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes, upon expiration of the protest period, if no timely protests are filed, and upon submission of the warranty deed, the docket should be closed. (CROSBY)

STAFF ANALYSIS: After submission of the warranty deed and if there are no timely protests to the proposed agency action issue (Issue No. 2), no further action will be required and the docket should be closed.