

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for grandfather certificate to operate water and wastewater utility in Polk County by Robert W. Arnold Sr. and transfer to governmental authority.

DOCKET NO. 981100-WS
ORDER NO. PSC-99-1563-FOF-WS
ISSUED: August 5, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER GRANTING GRANDFATHER CERTIFICATES,
DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS, AND
APPROVING TRANSFER OF THE UTILITY TO THE CITY OF WINTER HAVEN

BY THE COMMISSION:

Background

On September 4, 1998, Robert W. Arnold Sr., filed an application for grandfather certificates to provide water and wastewater service in Polk County, pursuant to Section 367.171, Florida Statutes. The application was filed after the Polk County Board of County Commissioners adopted a resolution declaring the utilities in the county to be subject to the provisions of Chapter 367, Florida Statutes. The Resolution was acknowledged by this Commission by Order No. PSC-96-0896-FOF-WS, issued July 11, 1996, in Docket No. 960674-WS.

At the time this Commission received jurisdiction in Polk County, the utility owned by Mr. Arnold was known as Lake n' Golf Estates. After numerous attempts by the Commission staff to assist Mr. Arnold in filing the grandfather certificate application, the

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application was filed on September 4, 1998. In the application, Mr. Arnold indicated that the name of the utility would be Robert W. Arnold, Sr. (Arnold or utility) instead of Lake n' Golf Estates. Arnold is a Class C utility which provides water and wastewater service to one commercial customer and approximately 193 residential customers. The utility has been in existence providing service since 1979.

The application, as filed, was deficient. Arnold was advised of the deficiencies by letter dated October 22, 1998. A follow-up letter regarding the deficiencies was sent on January 6, 1999. In December, 1998, after the first deficiency letter was sent, Mr. Arnold advised the Commission that he intended to sell the utility to the City of Winter Haven (City). The City was called to verify the proposed sale.

On December 30, 1998, application forms were sent to both the City and the utility to be filed for approval of the transfer of the utility to the City. However, the City was concerned that Mr. Arnold had not complied with Commission requirements, and coordinated with the Commission in an effort to have Mr. Arnold complete the certification process prior to submission of the application for transfer. The deficiencies in the application for certificates were corrected on March 3, 1999. The application for approval of the transfer of the utility to the City was filed on May 4, 1999.

Both the Florida Department of Environmental Protection (DEP) and the Polk County Health Department (Health Department) have outstanding concerns with the utility. However, because the City is in the process of purchasing the utility and correcting or eliminating the problems, DEP and the Health Department are not pursuing correction of the problems at this time.

Pursuant to Rules 25-30.110 and 25-30.120, Florida Administrative Code, annual reports and regulatory assessment fees are due from regulated utilities regardless of whether a certificate has been granted. This utility has been subject to Commission regulation since May 14, 1996. On September 11, 1996, a letter explaining the requirements for regulatory assessment fees and an application for fee pass-through were sent to Mr. Arnold. In addition, letters concerning delinquent annual reports and regulatory assessment fees, with reporting forms enclosed, were sent on April 10, 1998, and October 5, 1998. No response was received from Mr. Arnold. However, upon finding that unpaid

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regulatory assessment fees would be raised as an issue in conjunction with approval of the transfer to the City, Mr. Arnold obtained the amount outstanding. The total amount of regulatory assessment fees due from May 14, 1996, through June 30, 1999, including penalties and interest, was found to be \$8,945.44. A check for the full amount due was received on June 15, 1999.

Show Cause

Rule 25-30.110, Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Requests for extensions of time must be made in writing and must be filed before March 31. One extension of 30 days is automatically granted. A further extension may be granted upon a showing of good cause. Incomplete or incorrect reports are considered delinquent, with a 30-day grace period in which to supply the missing information.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3.00 per day.

Arnold has been subject to this Commission's jurisdiction since May 14, 1996. By letters dated September 11, 1996, April 10, 1998, and October 5, 1998, the Commission staff notified the utility regarding the necessity of filing the annual reports and paying regulatory assessment fees. To date, the annual reports have not been filed. Arnold has, however, filed an affidavit certifying the revenues for purposes of calculating the regulatory assessment fees. The utility has also provided a check in the amount of \$8,956.44 as payment for the outstanding regulatory assessment fees, penalties and interest.

Although regulated utilities are charged with knowledge of the Commission's rules and statutes, we do not believe that the violation of Rule 25-30.110, Florida Administrative Code, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. As stated previously, Arnold is in the process of transferring its facilities to the City of Winter Haven. The transfer is scheduled to occur shortly after the certificates are issued in this docket. After the utility is transferred, the Commission will have no need for the information included in the

annual reports. Arnold has provided an affidavit certifying the revenues for purposes of calculating the regulatory assessment fees, and also provided a check in payment for the outstanding regulatory assessment fees, penalties and interest through June 30, 1999.

In consideration of the foregoing, we find it appropriate to accept the affidavit filed by Arnold certifying the utility's revenues for purposes of calculating regulatory assessment fees for 1996, 1997 and 1998, in lieu of the annual reports required by Rule 25-30.110, Florida Administrative Code. Therefore, a show cause proceeding will not be initiated against Arnold for failure to timely file its 1996, 1997, and 1998 annual reports, pursuant to Rule 25-30.110, Florida Administrative Code.

Application for Grandfather Certificates

The application is in compliance with Section 367.171, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$400, as required by Rule 25-30.020, Florida Administrative Code. Arnold also provided a copy of a warranty deed as proof that the utility owns the land upon which its facilities are located, in accordance with Rule 25-30.035(6), Florida Administrative Code.

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 Arnold is shown on Attachment A of this Order, which by reference is incorporated herein.

As discussed previously, according to DEP, there is an outstanding warning letter and pending permit application for the wastewater system. However, because the City is purchasing the utility and installing new lines to bypass the wastewater treatment facility, DEP is not pursuing enforcement of the warning letter.

In addition, according to the Health Department, there is a consent agreement outstanding with the utility. Enforcement of the consent agreement is not being pursued because the City will be purchasing the utility and interconnecting the water system with the City's water system. The interconnection will eliminate the problems with the utility's water system.

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Based on the foregoing, we find it appropriate to grant Arnold Certificates Nos. 612-W and 528-S. The territory Arnold is authorized to serve is shown on Attachment A of this Order.

Rates and Charges

The rates and charges currently being charged by Arnold are the rates and charges in effect at the time the utility submitted a franchise application to Polk County in 1994. The utility's rates and charges are set forth below.

Service Rates Billed Annually

Water and Wastewater

Residential Service:

Flat rate	\$250.00 for 60,000 gallons
Gallage rate	\$0.99 for each additional 1,000 gallons

Commercial Service:

Flat rate	\$250.00 for 60,000 gallons
Gallage rate	\$0.99 for each additional 1,000 gallons

Customer Deposits

N/A - deposits are not required.

Miscellaneous Service Charges

Initial Connection Fee	\$ 15.00
Normal Reconnection Fee	\$ 15.00
Violation Reconnection Fee	Actual Cost
Premises Visit Fee	\$ 10.00

Service Availability Charge

None. (System is built out.)

We find these rates to be reasonable and they are approved. Arnold shall continue to charge these rates and charges unless

authorized to change by this Commission. The utility has filed a tariff which reflects the rates and charges approved herein. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

Application for Transfer

The application, as filed on May 4, 1999, contained deficiencies, which were corrected on June 22, 1999. The application is now in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code.

The original closing date for the transfer was June 1, 1999. However, the City intends to have its lift station and connection lines in place prior to closing on the transfer. Due to delays in securing a permit from DEP for the lift station, the closing has been postponed. The City has estimated that the closing will take place no later than August 31, 1999.

Therefore, we find it appropriate to approve the transfer of facilities from Arnold to the City. We further find that Docket No. 981100-WS shall remain open and Certificates Nos. 612-W and 528-S shall remain active pending receipt of proof that the closing of the sale to the City has occurred. Within six months of the issuance date of this Order, Mr. Arnold shall file proof with the Commission that the closing has taken place. Upon receipt of proof of closing, Certificates Nos. 612-W and 528-S shall be canceled administratively.

Further, Arnold is responsible for the filing of annual reports and paying regulatory assessment fees from the date the Commission received jurisdiction until the date of the transfer. Mr. Arnold has paid regulatory assessment fees, penalties, and interest due from May 14, 1996, through June 30, 1999. In addition, Mr. Arnold shall pay all outstanding regulatory assessment fees due for the period of time from July 1, 1999, through the date of closing within 30 days of the date of transfer. If the regulatory assessment fees are not paid within the 30 days, the matter shall be referred to the Comptroller's Office for collection by the collection agent.

Upon receipt of proof of the closing and payment of the outstanding regulatory assessment fees, this docket shall be closed administratively.

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It is, therefore,

ORDERED by the Florida Public Service Commission that Robert W. Arnold Sr., 534 Somerset Drive, Auburndale, Florida 33823, is hereby granted Certificates Nos. 612-W and 528-S to serve the territory shown on Attachment A of this Order, which by reference is incorporated herein. It is further

ORDERED that the rates and charges set forth in the body of this Order are hereby approved. Robert W. Arnold Sr. shall continue to charge these rates and charges unless authorized to change by this Commission. It is further

ORDERED that the tariff filed by Robert W. Arnold Sr. shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that the transfer of the utility from Robert W. Arnold Sr. to the City of Winter Haven, Post Office Box 2277, Winter Haven, Florida 33880, is hereby approved. It is further

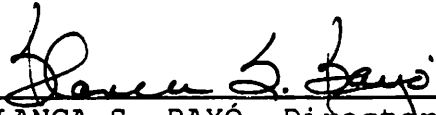
ORDERED that Robert W. Arnold Sr. shall provide the Commission with proof of closing of the sale within six months of the date of closing. Such proof shall include the actual date of closing. It is further

ORDERED that Robert W. Arnold Sr. shall pay all outstanding regulatory assessment fees due for the period from July 1, 1999, until the date of closing within 30 days of the date of closing of the sale of facilities to the City of Winter Haven. If the regulatory assessment fees are not paid within the 30 days, the matter shall be referred to the Comptroller's Office for collection by a collection agent. It is further

ORDERED that this docket shall remain open pending receipt of proof of closing of the transfer to the City of Winter Haven. Upon receipt of proof that closing has occurred, Certificates Nos. 612-W and 528-S shall be canceled, and the docket shall be closed administratively.

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By ORDER of the Florida Public Service Commission this 5th day of August, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

ALC

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.

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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/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 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.

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ATTACHMENT A

ROBERT W. ARNOLD SR.

WATER AND WASTEWATER TERRITORY DESCRIPTION

POLK COUNTY

Township 28 South, Range 25 East
In the Northeast 1/4 of Section 1

From the Northeast Corner of the Northeast 1/4 run West along the North line a distance of 430 feet to the Northeast corner of Lake and Golf Estates parcel, and the Point of Beginning, thence run North 89°46' West a distance of 538.28 feet, thence run North 89°46' West 559.0 feet, to the Northwest corner of said parcel, thence run South 00°02'18" West a distance of 660.25 feet, thence run South 89°57'42" East, a distance of 44.0 feet, thence run South 00°02'18" West, a distance of 646.38 feet, to the Southwest corner of said parcel, thence run South 89°57'42" East, a distance of 479.0 feet, thence continue South 89°57'42" East, a distance of 295.72 feet, thence along a curve concave Southerly whose radius is 1969.06 feet, thence run Northeasterly along said curve an arc distance of 280.18 feet (central angle 08°03'48") to its intersection with the West right-of-way of the Southwest Florida Management District Canal, also the Southeast corner of said parcel, thence run North 00°03'48" East a distance of 1,248.72 feet to the Point of Beginning.