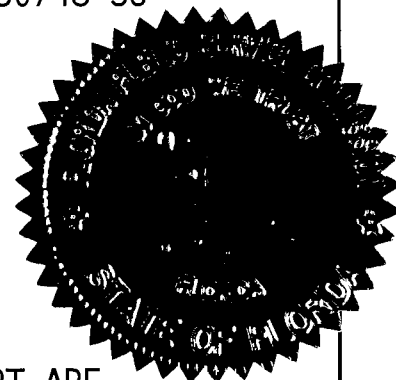


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 030748-SU

In the Matter of:

APPLICATION FOR APPROVAL
OF NEW CLASS OF SERVICE
FOR BULK WASTEWATER
SERVICE IN LEE COUNTY BY
FOREST UTILITIES, INC.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 16**

BEFORE: CHAIRMAN LILA A. JABER
COMMISSIONER J. TERRY DEASON
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

DATE: September 30, 2003

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Chief, Office of Hearing Reporter
FPSC Division of Commission Clerk
Administrative Services
(850) 413-6732

1 PARTICIPATING:

2 MARSHALL DETERDING, ESQUIRE, representing Forest
3 Utilities, Inc.

4 ROBERT SCHEFFEL WRIGHT, ESQUIRE, representing Lee
5 County.

6 KEN PLANTE, ESQUIRE, representing JAMAICA BAY.

7 JENNIFER RODAN, ESQUIRE, and MARTHA BROWN, ESQUIRE,
8 representing the Commission Staff.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN JABER: We're on Item 16.

MS. RODAN: Commissioners, we have an oral revision to make to staff's recommendation on Item 16 because the facts of this case have changed since we filed our initial recommendation.

Our recommendation on Issue 1 for the motion to dismiss and Issue 2 for the tariff was based on the emergency nature of Jamaica Bay Mobile Home Park's need for bulk wastewater service from Forest Utilities. We want to defer the recommendation on Issue 1, and we now recommend that the Commission suspend the tariff in Issue 2 instead of approving the tariff as we had originally recommended.

The original recommendation was based in good part on the understanding that the service would initially be provided by Forest on a temporary basis to help Jamaica Bay comply with the DEP consent order with possible permanent service at a later date.

At the end of last week, Lee County informed us that they had executed an agreement with Jamaica Bay for temporary bulk wastewater service. Staff needs additional time to consider the changed circumstances. The Commission should decide to approve or suspend the tariff because the 60-day file and suspend deadline expires today.

Regarding Issue 3, the docket should remain open

1 pending resolution of Issues 1 and 2. We intend to bring a
2 revised recommendation on both issues to the November 3rd
3 agenda. The parties have been informed of this request and are
4 here to address the revised recommendation.

5 CHAIRMAN JABER: Mr. Deterding.

6 MR. DETERDING: Thank you, Commissioners. I am here
7 on behalf of Forest Utilities. I just want to briefly address
8 the Commission. We are concerned with this case being heard at
9 some point in time and with some decision being rendered,
10 because we are still in negotiations with Jamaica Bay about the
11 potential for their receiving bulk service.

12 There has been some suggestion that there is no need
13 to establish a rate. Admittedly, there is no need to
14 immediately establish a rate, so certainly we have no problem
15 with the staff's proposal to suspend at this time. But there
16 is a need both to address Issue 2, the suspension, or the
17 approval of the rate, and to address Issue 1, which is dealing
18 with the question of whether or not -- well, it's dealing with
19 a motion to dismiss that raises several issues related to
20 whether or not this utility has to have an extension of service
21 territory in order to provide bulk service. That issue is of
22 special importance to us because we believe that eventually the
23 Commission has to address that issue.

24 We have been -- our negotiations with Jamaica Bay
25 were hindered to a great extent by Lee County's allegation and

1 their other departments refusal to issue permits based upon an
2 allegation that we had to extend our service territory in order
3 to provide bulk service. So in order to avoid that occurring
4 again, and us having those kind of problems and those kind of
5 roadblocks placed in front of us, we believe that issue has got
6 to be addressed.

7 I believe, the customer still believes, and proof
8 that there are ongoing negotiations and ongoing discussions for
9 the potential for service from Forest is evidenced by, number
10 one, the fact that the agreement they entered into is a
11 temporary emergency agreement, and also that it allows for
12 termination on 90 days notice. And, secondly, on the fact that
13 both we here at Forest and the representative of Jamaica Bay,
14 Mr. Ken Plante here, who is to my left, are still interested in
15 seeing that this go forward.

16 Otherwise if we did not believe that there was some
17 need to resolve these issues, there wouldn't be a need to
18 resolve these issues if we weren't still in discussion. So
19 while I don't really have a problem with the staff
20 recommendation, per se, I am concerned that we do need to have
21 a decision on these issues eventually.

22 CHAIRMAN JABER: And that is your client, right, Mr.
23 Deterding?

24 MR. PLANTE: Yes. Good afternoon. My name is Ken
25 Plante with the law firm of Roetzel & Andress in Tallahassee,

1 and I represent Jamaica Bay. I would like to second what Mr.
2 Deterding said with just a couple of caveats. It is our
3 position since everything -- we do have an agreement with Lee
4 County, that is correct, however it has taken about six months
5 in which to arrive at that, and we are convinced that but for
6 negotiations with Forest Utilities and coming before you here
7 we would still be in negotiations with them.

8 It has been a very difficult process and we would
9 like to leave -- we would like an ultimate decision by the
10 Commission because we would like that option to remain
11 available to the people that we serve, so that if things do
12 break down with Lee County, we have an answer with respect to
13 can we go to Forest Utilities. As it stands now, without a
14 response from the Commission, the Department of Environmental
15 Protection will not issue a permit for us. That was our first
16 problem with them, because it was a different service area, or
17 so they said. So we are really in a Catch-22. We couldn't get
18 the permits, so -- and temporary is for five years. Anything
19 can happen. We think this issue may arise again and we would
20 like the ability just, so that the option is out there and this
21 question is answered, so we can pursue it. Thank you.

22 CHAIRMAN JABER: Mr. Wright, do you represent Lee
23 County?

24 MR. WRIGHT: Yes, Chairman Jaber, I sure do. Just
25 first off, I object to their characterizing Lee County's

1 behavior in this, but just to respond to that.

2 We support the staff recommendation to defer Issue 1
3 and to suspend the tariff. We didn't have any problem at all
4 with going forward to a ruling on the issue that is presented
5 here. I don't think this is the docket in which to do it
6 because of the changed facts and circumstances at this time,
7 but I think something like a rulemaking, or if they wanted to
8 frame a proper petition for a declaratory statement, we will be
9 there. We are perfectly ready, willing, and able to argue the
10 issue that exists. It doesn't exist in a real sense at this
11 time, but we are happy to move forward to litigate that issue.
12 We support the recommendation.

13 CHAIRMAN JABER: Commissioners, do you have any
14 questions of staff or the parties? I have a question of Mr.
15 Deterding. It has been my experience we establish bulk service
16 rates or any rate for that matter when we have expenses to
17 review. And we don't have that if you all don't have a
18 contract. That is not to say that I disagree with you with
19 regard to preserving an opportunity for you to come back, and I
20 agree with the suspension of the tariff. But how can we
21 approve a rate when we don't have expenses or a contract to
22 review?

23 MR. DETERDING: Well, to the extent we enter into an
24 agreement with Jamaica Bay for bulk service, the expenses are
25 not likely to change significantly. We did provide as is

1 required under the statute an analysis of those costs, and the
2 original staff representation included a detailed review of
3 those.

4 Now, it is conceivable circumstances might change
5 somewhat, but it is unlikely the point of connection would
6 change, it is unlikely that the changes in our additional costs
7 related to providing that service would change substantially.
8 But we don't have a problem with some sort of requirement that
9 when we do come back with a firm contract that the Commission
10 review those costs again, or ask us, or require us to submit
11 additional updates to the extent they change. I don't think
12 they will change materially.

13 But my concern is that if we don't have a decision by
14 the Commission on these issues, that the same objections, the
15 same roadblocks will be thrown in our way. Now, Mr. Wright
16 objects to our characterization of the county's -- what the
17 county has done. The county denied a building permit based
18 upon an allegation that this had to be within the service
19 territory of Forest Utilities in order for us to get a building
20 permit. Now it was not my permit, it was Jamaica Bay's to
21 bring their lines to Forest. But I don't think that is a
22 mischaracterization. It's a fact. And I believe that that
23 will recur unless these issues are addressed.

24 CHAIRMAN JABER: Commissioners, do you have questions
25 or a motion?

1 COMMISSIONER DEASON: I can move approval of staff's
2 modified recommendation.

3 COMMISSIONER DAVIDSON: Second.

4 CHAIRMAN JABER: There has been a motion and a second
5 to approve staff's recommendation as modified today.

6 All those in favor say aye.

7 (Simultaneous affirmative vote.)

8 CHAIRMAN JABER: Item 16 is approved as modified.

9

10

* * * * *

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)

:

CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 8th day of October, 2003.



JANE FAUROT, RPR
Chief, Office of Hearing Reporter Services
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732