

State of Florida



# Public Service Commission

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## -M-E-M-O-R-A-N-D-U-M-

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**DATE:** May 25, 2006

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Economic Regulation (Johnson, Walden)  
Office of the General Counsel (Fleming) *[Handwritten signatures]*

**RE:** Docket No. 060169-SU – Application for transfer of non-jurisdictional Laurel Oaks Wastewater System in Lee County from The Laurel Oaks Property Owners Association, Inc. to Forest Utilities, Inc.

**AGENDA:** 06/06/06 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Arriaga

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\060169.RCM.DOC

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### Case Background

Forest Utilities, Inc. (Forest or utility) is a Class B wastewater utility serving approximately 2,207 customers in Lee County. The utility is in the South Florida Water Management District and it is located in the designated water resource caution area of the district. Water service is provided by Lee County Utilities. The utility's 2005 annual report shows total operating revenue of \$705,367 and a net operating loss of \$34,563. In 1981, the

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utility was granted Certificate No. 300-S in Order No. 10430.<sup>1</sup> There has been one amendment to the certificated territory approved in Docket No. 960229-SU<sup>2</sup>.

On February 28, 2006, Forest filed an application for authority to transfer the assets of the Laurel Oaks wastewater system from the Laurel Oaks Property Owners Association, Inc. (Association or Seller) to Forest. The Association entered into an agreement with Forest to transfer all ownership interest in the Laurel Oaks wastewater system when it became the subject of a consent order with the Florida Department of Environmental Protection (DEP). Before this agreement, the residents were in danger of losing their wastewater service and the plant had become an environmental hazard. The consent order required substantial repairs or the removal of the package treatment system. Instead, the association entered into an agreement with Forest to provide wastewater service to its members through an interconnection. The developer is to construct and donate the offsite facilities needed to interconnect the facilities to Forest. The agreement limits the costs of the interconnection to \$100,000 for the developer. If the cost of the interconnection exceeds \$100,000, the additional cost will be paid by Forest. Laurel Oaks is adjacent to Forest's service territory. The Laurel Oaks package treatment plant will be dismantled.

The purpose of this recommendation is to address the amendment of the territory and transfer of assets pursuant to Sections 367.045(2) and 367.071, Florida Statutes.

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<sup>1</sup> Docket No. 810006-S, issued on December 02, 1981, In Re: Application for original sewer certificate by Forest Utilities, Inc.

<sup>2</sup> Docket No. 960229-SU, issued on July 17, 1996, In Re: Application for Amendment of Certificate No. 300-S in Lee County by Forest Utilities, Inc.

### Discussion of Issues

**Issue 1:** Should the transfer of the non-jurisdictional Laurel Oaks wastewater system from the Laurel Oaks Property Owners Association, Inc. in Lee County to Forest Utilities, Inc. and amendment of Forest's service territory be approved?

**Recommendation:** Yes. The transfer of the Laurel Oaks wastewater system to Forest is in the public interest and should be approved effective the date of the Commission's vote. The rates and charges approved for Forest should be continued until authorized to change by the Commission in a subsequent proceeding. Certificate No. 300-S should be amended to include the territory described in Attachment A. (Johnson, Walden)

**Staff Analysis:** On February 28, 2006, Forest applied for transfer of the Laurel Oaks wastewater system in Lee County from the Laurel Oaks Property Owners Association, Inc. to Forest. The transfer is contingent on Commission approval and the closing is scheduled to take place within 30 days of the final approval of the transfer by the Commission.

The application is in compliance with the governing statute, Section 367.071 and 367.045, Florida Statutes, and other pertinent statutes and rules concerning an application for transfer. Pursuant to Rule 25-30.030, Florida Administrative Code, the application contains proof of compliance with the noticing provisions. One objection to the application was received; however, the objection was withdrawn. No other objections were received and the time for filing such has expired.

A copy of the purchase agreement is included in the application which includes the sales price, terms of payment, and a list of the assets purchased. There are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, or leases that must be disposed of in relation to the transfer. Under the terms of the purchase agreement, the Laurel Oaks wastewater treatment plant will be dismantled by the Association and the developer will construct and donate the facilities needed to interconnect the Laurel Oaks system to Forest. The agreement limits the costs of the interconnection to \$100,000 for the developer. According to the applicant, \$100,000 is sufficient for the construction of an interconnection. However Forest is responsible for any costs that exceed \$100,000. Since no cash is changing hands between Forest and Laurel Oaks as a result this transaction, there is no financing.

Forest states that the transfer is in the public interest because it has over 25 years of experience in providing wastewater service in Lee County under the regulation of the Florida Public Service Commission. The utility is well managed and has demonstrated its technical and financial ability to provide wastewater service within its service territory in Lee County. The Laurel Oaks members will receive the expertise of a professionally managed and operated utility. The applicant will fulfill all of its commitments, obligations and representation with regard to utility matters.

Staff has confirmed with DEP that Forest is currently in environmental compliance with respect to DEP standards. Forest has sufficient excess capacity to serve the Laurel Oaks subdivision. The treatment facilities are currently under utilized and the additional customers of

the Laurel Oaks subdivision will increase Forest's annual revenues by five percent. Forest's expected increase in annual earnings is based on the minor increase in variable costs and the fixed costs associated with the idle capacity that will be shared over a larger customer base.

The utility's certificate should be amended to reflect the additional service area of Laurel Oaks. The Laurel Oaks service area includes 113 residential customers and two general service customers. Upon the approval of the transfer by the Public Service Commission, Forest intends to begin charging its residential and general service rates to the residents of the Laurel Oaks subdivision which are identical to the rates charged by the Association. The present customers of the Laurel Oaks subdivision are not required to pay Forest's service availability charges. Any future connections requested in the Laurel Oaks subdivision will be required to pay Forest's service availability charges.

Staff has also verified that Forest has no outstanding regulatory assessment fees and no fines or refunds are owed. The utility has filed its 2005 annual report and paid its 2005 RAFs and there are no outstanding penalties and interest.

Based on the above, staff recommends that the transfer of the Laurel Oaks wastewater system to Forest is in the public interest and should be approved effective the date of the Commission's vote. The rates and charges approved for Forest should be continued until authorized to change by the Commission in a subsequent proceeding. Certificate No. 300-S should be amended to include the territory described in Attachment A.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes, because no further action is necessary, this docket should be closed.  
(Fleming)

**Staff Analysis:** Because no further action is necessary, this docket should be closed.

Forest Utilities, Inc.  
In Lee County

Description of Territory Served

Laurel Oaks Subdivision  
Phases I and II

Laurel Oaks, Unit 1, according to the Plat thereof, recorded in Plat Book 52, Pages 24 through 29, inclusive, of the Public Records of Lee County, Florida

Laurel Oaks, Unit II, a subdivision, as recorded in Plat Book 56, Pages 13 through 17, inclusive, of the Public Records of Lee County, Florida

Also described as:

The South One-Half (S1/2) of the North One-Half (N1/2) of the Southeast Quarter (SE1/4) of Section 36, Township 45 South, Range 24 East, Lee County, Florida