

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: November 18, 2004

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

FROM: Division of Economic Regulation (Johnson, Kaproth, Redemann)
Office of the General Counsel (Gervasi)

RE: Docket No. 031087-WU – Application for certificate to provide water service in Polk County by The Colinas Group, Inc., receivers for Lazy S Utilities, Inc.

AGENDA: 11/30/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: 11/30/04 – Statutory deadline for ruling on original certificate pursuant to Section 367.031, Florida Statutes

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\031087.RCM.DOC

Case Background

The Colinas Group, Inc. (CGI or utility) is a Class C water utility providing service to approximately 105 customers in Polk County. The utility is in the Southwest Florida Water Management District (SWFWMD) in the Southern water use caution area. Water is purchased from the City of Lakeland through a master meter. Wastewater service is provided by septic tanks. The utility was organized in approximately 1960.

Although Polk County came under Commission jurisdiction on May 14, 1996, this utility was not brought to the attention of the Commission until a notice of intent to abandon the utility was filed by the representatives of the Estate of Mr. Archar Smith. It appears that the system was previously exempt from Commission regulation pursuant to Section 367.022(8), Florida Statutes, because the owner was charging less than the cost of the water service to the customers of Lazy S.

On February 7, 2003, the Circuit Court of the Tenth Judicial Circuit in Polk County issued an Order in Case No. 53-2002-CA-004961, declaring Lazy S Utilities, Inc. (Lazy S)

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abandoned and appointing CGI receiver of the system. In addition, the court order established new rates and charges for the utility and required the rates and charges to remain in effect until the Commission establishes rates for the utility. The only assets are the distribution system and meters which are in poor condition.

On December 3, 2003, CGI applied for a certificate of authorization for the Lazy S system. The utility's initial application was found to be deficient. The utility corrected the deficiencies on August 10, 2004. Several customers filed timely objections to the utility's certificate application. All of the objections have been resolved and the last objection was withdrawn on September 1, 2004, making this date the official filing date of the completed application. Pursuant to Section 367.031, Florida Statutes, the Commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application.

On November 1, 2004, CGI requested Commission approval of a proposed payment plan for its outstanding 2003 Regulatory Assessment Fees (RAFs) and associated penalties and interest.

This recommendation addresses the acknowledgement of the appointment of CGI as receiver for Lazy S Utilities, Inc., CGI's application for water certificate, the authorization of rates and charges, service availability charges and the requested payment plan for outstanding RAFs, penalties and interest. The Commission has jurisdiction pursuant to Sections 367.031 and 367.045 Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission acknowledge the Colinas Group, Inc. as receiver for Lazy S Utilities, Inc.?

Recommendation: Yes. The Commission should acknowledge the Colinas Group, Inc. as receiver for Lazy S Utilities, Inc. (Johnson, Gervasi)

Staff Analysis: On February 7, 2003, the Circuit Court of the Tenth Judicial Circuit in Polk County (circuit court) issued an order in Case No. 53-2002-CA-004961, declaring Lazy S abandoned and appointing CGI as receiver for the system. In addition, the court order increased the rates for all customers until such time as the Commission establishes rates for the utility. Rule 25-30.090, Florida Administrative Code, provides for the Commission to assist counties in the appointment of a receiver. In this case, the abandonment resulted from the death of the original owner and the personal representatives of the deceased's estate no longer wanting to be in the utility business. According to the Department of State, Division of Corporations, Lazy S is no longer active as a corporation. Before the utility went into receivership, Polk County and the City of Lakeland were each given the opportunity to take over the operations of the utility and both declined. Although the Commission has had jurisdiction in Polk County since May, 1996, Lazy S had never applied for a certificate from the Commission. Water is purchased from the City of Lakeland. It appears that the utility was exempt from Commission regulation pursuant to Section 367.022(8), Florida Statutes, because the owner was charging less than the cost of the water service to the customers of Lazy S. When the Commission was noticed of the utility's intent to abandon, no action was taken because the system was believed to be exempt.

CGI began operating the utility on February 7, 2003, pursuant to the circuit court's appointment of CGI as the receiver for Lazy S. The term of the receiver's appointment is to continue until the receiver disposes of the utility and files a final report with the circuit court, or until further order of the court. In addition, the circuit court released CGI from posting any bond in regard to this matter and ordered CGI to file an inventory and accounting under oath within 20 days from the date of the order and every 12 months thereafter.

Among other provisions, the circuit court order required the owner to surrender all necessary easements for the operation of the utility, assets, documents and facilities pertaining to Lazy S to the receiver. The order required the receiver to operate and maintain uninterrupted service to customers, as well as to pay all operating expenses from the revenues received. In addition, the receiver was ordered to pay off the \$19,000 debt owed by the utility to the City of Lakeland within 24 months. The receiver may, by order of the court, authorize construction for improvements to the property.

The court order also recognizes that, in accordance with Section 367.165(3), Florida Statutes, the receiver operating an abandoned utility shall be considered to hold a temporary authorization from the Public Service Commission. As such, the receiver is responsible for filing the 2003 annual report pursuant to Rule 25-30.110, Florida Administrative Code, and filing the 2003 regulatory assessment fees pursuant to Rule 25-30.120, Florida Administrative Code. In addition, the receiver is required to fulfill all requirements of a regulated utility.

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Based upon the foregoing, staff recommends that the Commission should acknowledge the Colinas Group, Inc. as receiver for Lazy S Utilities, Inc.

Issue 2: Should the Colinas Group Inc.'s application for a water certificate be granted?

Recommendation: Yes, the Colinas Group, Inc. should be granted water Certificate No. 624-W to serve the territory described in Attachment A effective February 7, 2003. (Johnson, Redemann)

Staff Analysis: As stated earlier, CGI was appointed as receiver for the Lazy S water system on February 7, 2003. The circuit court order required CGI to manage and operate the utility in accordance with the applicable statutes and regulations of the Florida Public Service Commission. Based on the requirements of the circuit court order, CGI applied for a water certificate on December 3, 2003.

CGI completed its application for an original water certificate on August 10, 2004. The application is in compliance with the governing statute, Section 367.045, Florida Statutes, Rule 25-30.034, Florida Administrative Code, and other administrative rules concerning an application for an original certificate. Several customers filed objections to the application. The majority of objections raised concerns about whether the utility was seeking a rate increase in this proceeding, as well as concerns about the poor condition of the lines. The last objection and request for hearing was withdrawn during a telephone conversation with the staff attorney and the official filing date became September 1, 2004. According to the applicant, CGI held a meeting on March 18, 2003 for customers interested in learning more about the water system.

The utility has provided adequate service territory and system maps and an adequate description of the territory requested. A description of the territory is appended to this memorandum as Attachment A. The prior owner was ordered to turn over all necessary easements for the operation of the utility to the receiver.

CGI is owned by Mr. Charles Freed and four other investors. As evidence of CGI's financial and technical ability to provide water service, CGI has indicated that it will make the financial and operating commitment necessary for the utility to be successful in providing water service to the residents within its service territory as the funds become available. Currently, all funding for the system is provided from the utility's collection of the monthly service rates. As evidence of CGI's technical ability, the applicant indicated that Mr. Freed has 14 years of experience operating water and wastewater systems, four years as the Utilities Director for Polk County, and three years as the Utilities Director for Haines City, Florida. Mr. Freed has been a registered engineer in the state of Florida for 24 years.

The utility is interconnected with the City of Lakeland which supplies bulk water to the system through a master meter. The utility's facilities consist of a distribution system and meters which are in poor condition. Attachment B is a copy of a letter from the SWFWMD describing the condition of the water system and the needed repairs. The receiver has aggressively repaired leaks in the water system, and currently meets all existing water quality and quantity standards required by the Polk County Health Department. The applicant stated that there are no other utilities willing to provide water service to the community. The DCA has advised that the proposal by CGI to provide water service is consistent with the Polk County Comprehensive Plan.

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Based on the above information, staff recommends that it is in the public interest to grant the application for an original water certificate. Although CGI has limited financial resources, it has demonstrated that it has the technical expertise to operate the utility in a safe and efficient manner. Further, no other entity has been identified that is willing and able to take over the system. Pursuant to Section 367.165(3), Florida Statutes, the receiver operating an abandoned utility shall be considered to hold a temporary authorization from the Commission. Accordingly, staff recommends that the Colinas Group, Inc., be granted water Certificate No. 624-W to serve the territory described in Attachment A effective February 7, 2003.

Issue 3: Should the Colinas Group, Inc. continue to charge the rates and charges authorized by the circuit court?

Recommendation: Yes, the Colinas Group, Inc., as receiver for Lazy S Utilities, should continue to charge the monthly service rates and miscellaneous charges authorized by the circuit court until otherwise authorized by the Commission. The tariff reflecting the approved rates and charges should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets. (Johnson)

Staff Analysis: As previously discussed, the prior owner appears to have been exempt from Commission regulation pursuant to Section 367.022(8), Florida Statutes, because water service was sold at a price which did not exceed the purchase price. According to the utility's application, the prior owner collected varying amounts (\$0 - \$20) per month from the customers of Lazy S.

Pursuant to Section 367.165(3), Florida Statutes, the receiver operating a utility shall be considered to hold a temporary authorization from the Commission, and the approved rates of the utility shall be deemed to be the interim rates of the receiver until modified by the Commission. The utility's proposed monthly rates and charges were established by the circuit court on February 7, 2003. The court authorized CGI to collect those rates until the Commission otherwise establishes rates for the utility. The court also ordered CGI to pay the outstanding amount due to the City of Lakeland for purchased water, approximately \$19,000. The following rates and charges were approved by the circuit court for CGI:

<u>WATER</u>	
<u>Residential</u>	
<u>Monthly Service Rates</u>	
<u>Base Charge</u> (includes 8,000 gallons)	\$ 35.50
Charge per 1,000 gallons	
8,001-13,000 gallons	\$ 2.05
13,001-18,000 gallons	\$ 2.50
18,001+ gallons	\$ 2.75
 <u>Miscellaneous Service Charges</u>	
Initial Connection Fee	\$ 15.00
Normal Reconnection Fee	\$ 20.00
Violation Reconnection Fee	\$ 15.00
Premises Visit Fee (in lieu of disconnection)	\$ 10.00
Late fee	\$ 3.50

CGI has been charging only the \$35.50 base charge because most of the customers are not metered. The few existing meters in the service area do not work properly. No new meters have been installed by CGI to date.

The original cost of the distribution system for Lazy S is unknown. CGI's investment to date is limited to the amount spent to repair the distribution system as leaks have been detected. Even if the original cost for the distribution system were known, that amount would be imputed as contributions in aid of construction pursuant to Rule 25-30.570, Florida Administrative Code.

Collecting \$35.50 per month from 105 customers results in revenues of \$44,730 per year. The utility's primary expense is the cost of purchased water to the City of Lakeland. The City charged a base facility charge of \$59.00 per month and \$1.73 per 1,000 gallons as of September, 2003. However, on October 1, 2004 the rates increased to a base facility charge of \$63.13 per month and \$1.85 per 1,000 gallons. The Lazy S customers have been using approximately 1,600,000 - 2,200,000 gallons of water per month. For the 12 month period from October, 2003 to September, 2004, CGI incurred a cost of \$42,295 for purchased water.

The utility provided a schedule showing its operating and maintenance costs for February through November, 2003. No information regarding proposed salaries or a return on investment was included. The utility's average monthly expenses for contractual services, water testing, materials and supplies, and billing were approximately \$495, excluding salaries, purchased water and regulatory assessment fees.

Staff has contacted Mr. Freed to discuss the financial condition of the utility. Mr. Freed does not want to raise the rates at this time because this area is economically depressed. He has continued to work with the City of Lakeland in hopes that it will take over the system. He indicated that he intends to apply for a staff assisted rate case in the near future, at which time the utility may be able to provide better information regarding the cost to install meters and repair the distribution system.

Staff recommends that the Colinas Group, Inc., as receiver for Lazy S Utilities, should continue to charge the monthly service rates and miscellaneous charges authorized by the circuit court until otherwise authorized by the Commission. The tariff reflecting the approved rates and charges should be effective for services provided or connections made on or after the stamped approval date on the tariff sheets.

Issue 4: What are the appropriate service availability charges for the Colinas Group, Inc.?

Recommendation: The meter installation and connection charges set forth within the staff analysis are appropriate and should be approved effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(2), Florida Administrative Code. (Johnson)

Staff Analysis: Pursuant to Section 367.165(3), Florida Statutes, the receiver operating a utility shall be considered to hold a temporary authorization from the Commission, and the approved rates of the utility shall be deemed to be the interim rates of the receiver until modified by the Commission. The utility's service availability policy and charges were established by the circuit court on February 7, 2003. The court authorized CGI to collect those rates until the Commission otherwise establishes rates for the utility. The following service availability charges were approved by the circuit court for CGI:

Meter Installation Charge	\$150.00
Water Connection Charge	\$300.00

The circuit court order further provided that an assessment would be necessary to pay for installation of new meters and provided that it could be paid as a one-time payment or as an additional item on the monthly water bills for 12 or 24 months. The connection fee was to be charged for new connections.

As discussed in Issue 3, CGI has been charging only the \$35.50 base charge because most of the customers are not metered. The few existing meters in the service area do not work properly. No new meters have been installed by CGI to date. While the circuit court order indicates that a meter installation charge could be implemented for the existing customers, it has been Commission practice not to charge existing customers for the installation of meters. Staff does not believe the existing customers should be charged for meters at this time.

Staff recommends that the meter installation and connection charges set forth within the staff analysis are appropriate and should be approved effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(2), Florida Administrative Code.

Issue 5: Should the Colinas Group, Inc.'s payment plan of \$200 per month for unpaid 2003 RAFs and associated penalties and interest be accepted?

Recommendation: Yes. Staff recommends approval of the proposed payment plan. The first \$200 payment should be remitted by December 20, 2004. Monthly payments of \$200 should be received by the 20th of every month through June 2005 and one final payment of \$120 should be received by July 20, 2005. (Kaproth)

Staff Analysis: According to its Annual Report for 2003, the utility had gross operating revenues of \$29,632.83. Therefore, it should have paid RAFs of \$1,333.47 (.045 x \$29,632.83) by March 31, 2004. Instead, it incorrectly deducted \$24,635.77 from its gross operating revenues for water that it purchased from the City of Lakeland, an exempt entity, and paid \$220.46 on June 30, 2004. The utility incorrectly applied Rule 25-30.120(5), Florida Administrative Code. This rule allows a utility that purchases water from another utility regulated by the Commission to deduct the annual expense for purchased water from its gross operating revenues before calculating the amount of the RAF due. Therefore, RAFs of \$1,113.02 (\$1,333.47 - \$220.46) are still outstanding for 2003. Further, penalties and interest of \$311.33 and \$95.65, respectively, have been calculated through November 30, 2004. The result is outstanding RAFs, penalties and interest of \$1,520, as shown below.

	RAFs	Penalties	Interest	Total
June 30, 2004	\$ 220.46 Paid	\$ 33.07	\$ 6.61	\$ 39.68
RAFS, Penalties and Interest	\$1,113.02	278.26	89.04	1480.32
Total Owed	\$1,113.02	\$311.33	\$95.65	\$1520.00

Pursuant to Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each utility shall remit annually RAFs in the amount of 0.045 of its gross operating revenues. Pursuant to Rule 25-30.120(2), Florida Administrative Code, "[t]he obligation to remit the [RAFs] for any year shall apply to any utility which is subject to [the] Commission's jurisdiction on or before December 31 of that year or for any part of that year, whether or not the utility has actually applied for or been issued a certificate." Since CGI came under the Commission's jurisdiction February 7, 2003, CGI is responsible for RAFs for the time period of February 7, 2003 to the present.

Furthermore, pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. 5% of the fee if the failure is for not more than 30 days, with an additional 5% for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25%.

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2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% per annum.

As stated above, on November 1, 2004, CGI submitted a letter requesting to pay its delinquent 2003 RAFs and associated penalties and interest using a payment plan of \$200 per month. Staff recommends approval of the proposed payment plan. The first \$200 payment should be remitted by December 20, 2004. Monthly payments of \$200 should be received by the 20th of every month through June 2005 and one final payment of \$120 should be received by July 20, 2005.

ISSUE 6: Should this docket be closed?

RECOMMENDATION: Yes, because no further action is necessary at this time, this docket should be closed. If CGI does not make a payment in accordance with the payment schedule addressed in Issue 4, staff will return to the Commission for enforcement of the payment plan. (Gervasi)

STAFF ANALYSIS: This docket should be closed, because no further action is necessary at this time. If CGI does not make a payment in accordance with the payment schedule addressed in Issue 4, staff will return to the Commission for enforcement of the payment plan.

The Colinas Group, Inc.
Receiver for Lazy S. Utility, Inc.
Water Service Area

Commencing at the Northwest corner of Section 26, Township 28 South, Range 23 East, thence South a distance of 25 feet to the South right-of-way line of Ariana Street also being The Point of Beginning, thence due east along the South right-of-way line of Ariana Street to the Northeast corner of the West 1/2 of the East 1/2 of the Northwest 1/4 of said section, thence Southerly a distance of 1225 feet, thence Easterly a distance of 670 feet to the East line of the Northwest 1/4 of said section, thence southerly along the East line of the Northwest 1/4 of said section a distance of 1430 feet to the Centerline of said section, thence West along the Centerline of said section to the West line of the Northwest 1/4 of Section 26, Township 28 South, Range 23 East, thence North along the West line of said section to the South right-of-way line of Ariana Street, also being the Point of Beginning. Being 142 acres more or less.

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