BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for new classification of service entitled "General Service - Agricultural Labor Camps," "General Service - RV Parks," and "Multi-Residential Service - General" in Collier County by Rookery Bay Utility Company.	DOCKET NO. 900328-SU ORDER NO. 23648 ISSUED: 10-22-90

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
FRANK S. MESSERSMITH

ORDER MODIFYING DEVELOPER AGREEMENT AND CLOSING DOCKET

BY THE COMMISSION:

Rookery Bay Utility Company (Rookery Bay or utility) is a Class "C" wastewater utility operating in Collier County. The 1989 Annual Report identified that the company served 1,667 customers. However, most of these customers are residents of master-metered condominiums and mobile home parks who are billed through their respective associations rather than by the company. Rookery Bay actually bills just sixteen (16) customers of record. Water is provided by Collier County Utilities.

The utility filed an application for three new classes of service on April 26, 1990. The Commission approved the utility's request at the July 31, 1990, Agenda Conference. By Order No. 23380, issued August 21, 1990, the Commission required the utility to revise and refile by August 15, 1990, the three developer

agreements which corresponded to the three new classes of service customers. The developer agreements were required to be modified in several respects, including the addition of the correct service availability charge.

The developer agreements for Six L's Farm Agricultural Labor Camp and Wentworth Development/Rookery Bay Apartments were revised, executed, and submitted on August 30, 1990. As for the third developer agreement, a dispute between the utility, the Imperial Wilderness developer, and the Imperial Wilderness condominium association has apparently arisen. The utility wants both of the parties to sign the new developer agreement, as both parties had signed the original. The developer and the condominium association are arguing over who, if anyone, should pay the service availability charge which the utility did not assess as it should have. As a result of the dispute, it appears that neither the developer nor the association are willing to sign the modified agreement.

By letter dated August 28, 1990, Rookery Bay requested a thirty day extension in which to file with the Commission the executed and modified developer agreements. The thirty days passed with the utility being unable to procure a signature from either of the Imperial Wilderness parties. By letter dated September 14, 1990, the utility requested a ninety day extension until December 13, 1990, in which to file the executed modified developer agreement with Imperial Wilderness.

Since the utility has had difficulty in obtaining the proper signatures for the modified Imperial Wilderness developer agreement, it is unable to file said developer agreement as it was required to do by Order No. 23380.

This Commission has the authority to modify agreements between a regulated utility and another party. H. Miller & Sons, Inc., v. Hawkins, 373 So.2d 913 (Fla. 1979). Furthermore, it is not necessary under the rules or statute to reexecute and refile a developer agreement that has been modified by subsequent Commission order. Reexecution and refiling, then, would be just a formality.

Therefore, we find that the developer agreement between the utility and the Imperial Wilderness developer and the Imperial Wilderness condominium association is modified by Order No. 23380 and that the utility is relieved of the requirement of that Order to file an executed modified agreement for Imperial Wilderness.

The utility, however, is reminded that although it will be relieved of its obligation to file the executed modified developer agreement with Imperial Wilderness, it is not relieved of its obligation to collect the service availability charge it never collected from Imperial Wilderness in the first place. The service availability charge which the utility must collect was approved by the Commission and in place at the time Imperial Wilderness hooked up. The utility is required by law to charge the service availability charge in its tariff; if the utility does not do so, it is subject to fine. So that we may monitor the utility's progress in this regard, we hereby require the utility to file quarterly status reports of its efforts to collect the outstanding service availability charge from Imperial Wilderness.

Finally, no show cause action will be initiated against the utility for filing two of the three developer agreements 15 days late.

It is, therefore,

ORDERED by the Florida Public Service Commission that the original developer agreement between Rookery Bay Utility Company and the Imperial Wilderness developer and the condominium association is hereby modified by our actions in Order No. 23380 and that Rookery Bay Utility Company is relieved of its obligation under said Order to file an executed modified agreement.
It is further

ORDERED that Rookery Bay Utility Company shall file quarterly status reports of its efforts in collecting the outstanding service availability charge from Imperial Wilderness. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission this 22nd day of OCTOBER, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 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 or sewer 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.