BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of TOPEKA GROUP, INC. to acquire control of DELTONA CORPORATION's utility subsidiaries in Citrus, Marion, St. Johns, Washington, Collier, Volusia and Hernando Counties.	)	DOCKET NO. 881501-WS ORDER NO. 24134 ISSUED: 2/18/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
BETTY EASLEY

ORDER APPROVING SERVICE AVAILABILITY POLICY AND DEVELOPER AGREEMENT AND CLOSING DOCKET

BY THE COMMISSION:

On November 18, 1988, Topeka Group, Inc. (Topeka) filed an application with this Commission for approval of the transfer of majority organizational control of the utility subsidiaries owned by the Deltona Corporation (Deltona). Timely objections to the application were filed by the Office of Public Counsel, the Deltona Corporation and the Boards of County Commissioners of Volusia and St. Johns Counties. In addition, in May, 1989, Deltona initiated an action against Topeka in the United States District Court for the Southern District of Florida, seeking, among other things, a declaratory judgement to compel Topeka to assume or honor various commitments made to lot purchasers regarding the availability of water and wastewater service from the utility subsidiaries. A public hearing was held in this docket on August 30 and 31, 1989, in Orlando, Florida.

On December 12, 1989, the Commission issued Order No. 22307, which approved the transfer of majority organizational control, and directed Deltona Utilities, Inc. and United Florida Utilities Corporation (the utilities) to: (1) file monthly updates on the status of land ownership; (2) file balance sheets and income statements for its systems; (3) honor prior commitments made to Deltona lot purchasers; and (4) file a revised Service Availability Policy which specifies, on an ongoing basis, the procedures and conditions leading to the determination of when lines will be invested or donated.

As evidenced in the record, under the prior ownership, the utilities would fund the cost of extending lines regardless of economic justification. Under the new ownership, the utilities stated they will look at the economic feasibility of the extension in deciding whether it will fund the extension or require the lot purchaser to do so. In Order No. 22307, the Commission found that, while it was an imprudent utility decision to extend lines without consideration of the economic feasibility, it was, nevertheless, not in the public interest to approve this transfer if the promise made to the lot owners would be ignored. Therefore, the Commission ordered the utilities to honor the commitments made to the lot owners and "send the bill" to either Deltona or Topeka, whichever was found to be responsible by the federal court. As previously stated, Order No. 22307 also ordered the utilities to file revised Service Availability Policies which specify, on an ongoing basis, the procedures and conditions leading to the determination of when lines will be invested or donated.

On November 6, 1989, Topeka and Deltona executed a Settlement Agreement in the federal court case which, among other things, resolved the dispute and law suit over the financial responsibilities for funding the cost of extending mains to lot owners requesting service. As part of the Settlement Agreement, Deltona and the utilities executed a Developer Agreement which defined the responsibilities related to approximately 40,000 previously sold lots and 25,000 unsold lots in the Deltona communities. In the Settlement and Developer Agreement, Topeka assumes responsibility for advancing funds to the utilities for main extensions to serve the lot owners which were promised water and/or sewer service. The Developer Agreement provides some limited protections by Deltona to reduce occurrences of uneconomical extensions, such as lot swapping and utility service fees.

In compliance with Order No. 22307, the utilities filed a draft of the revised Service Availability Policy on February 7, 1990. This initial draft of the policy did not address the terms of the Settlement and Developer Agreements or differentiate between the conditions under which service will be provided to lots for which commitments for service were made and those sold after the new owners took control for which commitments were no longer being made. Since receipt of the initial draft, our staff has met on several occasions with representatives of the utilities to discuss concerns with the policy, and the utilities filed several drafts.

On December 26, 1990, the utilities filed the proposed Service Availability Policy which contains the conditions for service for: (1) lots sold with commitments; (2) lots sold by Deltona after September 1, 1989 for which no commitments were made and; (3) any other properties, including properties added to the certificated territory as a result of territory expansion.

According to the Developer Agreement, Topeka assumes responsibility for advancing funds to the utilities for main extensions related to previously contracted lots. The agreement defined some limited protections provided by Deltona to reduce occurrences of uneconomical, burdensome extensions. Funds needed for extensions of less than a half mile will be advanced by Topeka. If the extension is over a half mile but less than one mile, Topeka may try to exchange lots with the customer. Deltona agreed to provide the utility access to its unsold lot inventory for purposes of trading lots. If the extension needed is over a mile in distance, Deltona agreed that it would be responsible for advancing the funds for the costs over a mile or would either trade lots with the lot purchaser or buy back the lot. Deltona agreed to this provision for a maximum of twelve times annually. Over that number, Topeka would be responsible for funding the entire extension. In addition, Deltona agreed to complete the asphalt road paving to the lot prior to the main extension.

These provisions of the Developer Agreement are contained in the utilities' proposed Service Availability Policy. We believe these provisions are consistent with our concerns expressed in Order No. 22307 regarding the commitments for utility service. In effect, the utilities are honoring the commitments and Topeka has assumed responsibility for funding the extensions. Pursuant to the Developer Agreement, Deltona has agreed to certain conditions under which it will share in this funding.

In the Service Availability Policy filed on December 26, 1990 (in Part II(1)), the utilities have deleted reference to individual lots and referred to contracted lots. According to Sheet No. 4.0 of its tariffs, contracted lots means those lots, tracts and parcels of land within the territory that have been sold by Deltona or its affiliates prior to September 1, 1989. Therefore, we find that the current policy obligates Topeka to honor the commitments made to contracted lots sold to individuals or in bulk and is consistent with Order No. 22307.

In addition to honoring the commitments made to contracted lots, the Developer Agreement also defines responsibilities related to funding the cost of providing service to approximately 25,000 unsold lots in the Deltona communities. Under the agreement, Deltona will modify its sales and marketing practices for the remaining lot inventory. Lots released for sale by Deltona will either be contiguous to already developed areas or in groups. Also, Deltona amended its registration statements filed with various land sales regulatory agencies to clarify the terms under which utility services are provided.

Further, Deltona restructured the terms in its standard installment lot sales contract to collect as a specifically identified part of the lot sales price, a utility service fee. Collections of the service fees are escrowed and provided to the utility on a monthly basis for its use in constructing main extensions. The current service fees collected by Deltona are $500 for water service and $1000 for sewer service. These fees are credited against the service availability charges authorized under the utility's tariff at the time initial service is requested. The utilities will treat all amounts collected and turned over by Deltona under the new sales contracts as CIAC. Contributions are tied to a specific lot rather than any individual purchaser. Therefore, if a lot purchase contract does not go full term, and the lot is resold, the utility service fees paid will remain with the lot. The ultimate lot owner has the benefit of all utility service fees paid. The proposed Service Availability Policy contains a reference to the collection of a utility service fee by Deltona for all future lot sales.

The above provisions of the Developer Agreement, which relate to unsold lots, will prevent a recurrence of the situation that existed under the previous utility ownership wherein commitments to fund line extensions were made without regard to the economic feasibility to the utilities. As noted above, Deltona has amended its contracts and registration statements to clarify the terms under which utility services are provided. Therefore, no blanket commitments for service are being made to future lot purchasers. Also, lots will be released for sale only if they are contiguous to existing development or in groups, thus reducing or eliminating the need for uneconomical extensions to provide service. In addition, the utility service fee collected by Deltona and turned over to the utilities on a monthly basis will provide cash flow to the utilities to partially fund the necessary line extensions.

We believe the proposed Service Availability Policy and Developer Agreement with Deltona indicate that the utilities will honor the commitments made to lot purchasers, as required by Order No. 22307. These documents demonstrate that Topeka and/or Deltona will fund the necessary line extensions to provide service. In addition, the proposed Service Availability Policy specifies how service will be provided on a going forward basis: (1) either for a property sold by Deltona (which will be governed by the Developer Agreement and include utility service fees credited against the charges applicable at the time of initial service) or (2) for some other property, in which case the approved service availability charges will be assessed. Accordingly, we find the proposed Service Availability Policy and the Developer Agreement between Deltona and the utilities are consistent with Order No. 22307 and are approved.

In addition to directing the utilities to honor prior commitments and to file a revised Service Availability Policy, Order No. 22307, directed the utilities to file monthly updates on the status of land ownership and to file balance sheets and income statements for its systems. The utilities have provided the Commission with evidence that it has obtained ownership of all land needed to provide service and the utilities have filed the balance sheets and income statements for all of the systems. Therefore, we find that the utilities have complied with all of the requirements of Order No. 22307.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that the revised Service Availability Policies and Developer Agreement filed December 26, 1990 are hereby approved. It is further

ORDERED that the revised Service Availability Policies and Developer Agreement are effective as of January 29, 1991, the date of our decision. It is further

ORDERED that the utilities have complied with all of the requirements of Order No. 22307. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 18th day of FEBRUARY, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

CB

by: Kay Flynn
Chief, Bureau of Records

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.