**FLORIDA PUBLIC SERVICE COMMISSION**

 **Fletcher Building**

 **101 East Gaines Street**

 **Tallahassee, Florida 32399‑0850**

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

 **August 25, 1994**

**TO :DIRECTOR OF RECORDS AND REPORTING**

**FROM :DIVISION OF WATER AND WASTEWATER (WASHINGTON, VONFOSSEN)**

 **DIVISION OF LEGAL SERVICES (O'SULLIVAN)**

**RE :UTILITY: WILDERNESS HOMEOWNER'S ASSOCIATION/**

 **POINCIANA UTILITIES, INC.**

 **COUNTY: OSCEOLA**

**CASES: DOCKET NO. 900400-WU - REQUEST FOR
 EXEMPTION FROM FLORIDA PUBLIC SERVICE COMMISSION REGULATION
 FOR A WASTEWATER TREATMENT PLANT IN OSCEOLA COUNTY BY THE
 WILDERNESS HOME OWNERS ASSOCIATION INC.**

**DOCKET NO. 900217-WS - INVESTIGATION INITIATED PURSUANT TO ORDER NO.**

 **22166, INTO APPROPRIATE BILLING FOR CUSTOMERS IN**

 **WILDERNESS DEVELOPMENT AREA OF POINCIANA UTILITIES, INC.**

 **IN OSCEOLA COUNTY**

**AGENDA : SEPTEMBER 6, 1994 - REGULAR AGENDA - INTERESTED PERSONS**

 **MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**SPECIAL INSTRUCTIONS: THIS IS A REVISION OF THE RECOMMENDATION FILED ON JUNE 23, 1994**

**LOCATION OF FILE: I:\PSC\WAW\WP\900217-B.RCM**

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 **CASE BACKGROUND**

 Poinciana Utilities, Inc. (Poinciana or PUI) is a Class A utility which currently provides water and wastewater service to approximately 4,100 water and 3,900 wastewater customers in Poinciana, Florida. During Poinciana's 1988 rate proceeding (Docket No. 881503-WS), a dispute arose between Poinciana and the developer of a subdivision known as The Wilderness, over the central plant (located in Phase I), and the lines in Phase II. The dispute centered on the ownership of the plant and which party had the right to bill which phases of the development.

 In 1986 Poinciana entered into an agreement with the Wilderness developer. Pursuant to the agreement, the developer would construct the water plant and lines for the three phases of the development and donate these facilities to Poinciana. Poinciana would then provide service to the entire development from its Wilderness plant. Pursuant to the agreement, the Phase 1 lines were transferred to Poinciana. However, neither the plant nor the Phase II and Phase III lines were completed prior to the effective date of the 1986 Tax Reform Act. Neither party would agree to assume the income tax liability associated with conveyance of the plant and lines. In July of 1988, the Wilderness developer conveyed by quit-claim deed the central plant, the land the plant is located on, and the lines in Phase II to the Wilderness Home Owners Association (Association). On March 21, 1989, Poinciana filed a complaint against the developer in the Circuit Court of the Ninth Judicial Circuit, in and for Osceola County, Florida, Case No. 89-704.

 From evidence presented at the rate case hearing it became apparent that this standoff and resulting litigation was causing confusion as well as a billing problem within Wilderness. During that test year, Poinciana billed the customers in Phase I at the full rate. These customers apparently received line maintenance service. Consequently, by Order No. 22166, the Commission directed that a separate investigation docket be opened to determine who rendered what services to whom and to determine the appropriate rate for such partial service. The investigation docket was opened shortly thereafter and was assigned Docket No. 900217-WS. Pursuant to Order No.22166, Poinciana would escrow all funds collected from the Wilderness Development pending the outcome of the investigation docket. The Commission was not a party to the escrow agreement.

 On May 3, 1990, the Association requested exemption from Florida Public Service Commission regulation for the water treatment plant located in the development pursuant to Section 367.022(7), Florida Statutes. Docket No. 900400-WU was opened to process the Association's request. On May 24, 1990, Poinciana filed a motion to intervene in the exemption docket and to consolidate the exemption and investigation dockets.

 On September 11, 1990, the Commission issued Order No. 23464, granting the motion to intervene but denying the motion to consolidate. Additionally, the Commission determined that neither the exemption nor investigation docket could be completed pending a decision by the court as to ownership of the disputed property. Therefore, both dockets were placed in monitor status.

 On March 18, 1994, the parties filed a Joint Motion To Approve Settlement Agreement with the Commission. It is the intent of the parties to resolve all litigation and Public Service Commission administrative action through approval of this agreement. In the Joint Motion, the parties state that the Wilderness Homeowners Association will withdraw its request for exemption in Docket No. 900400-WU, and request that the Commission approve the settlement and close Docket No. 900217-WS.

 A copy of the Joint Motion and the Settlement Agreement are attached to this recommendation. The relevant portions of the Settlement Agreement are listed below:

1. The Association will receive $49,000 from the escrow fund, plus any additional revenues collected by PUI for water service in the Wilderness Subdivision, up until the time that PUI assumes responsibility for operating the water plant.

2. The Association will convey all right, title and interest in the water plant to PUI.

3. PUI will supply and install bulk meters for Phase II and Phase III of the Wilderness Subdivision and will bill the Association directly for water service for Phase II and Phase III.

4. PUI will assist the Association in obtaining billing service, including meter reading.

5. PUI will issue its first bill to the Association in April, 1994 for water provided in March.

6. The parties will enter into a joint stipulation dismissing the Circuit Court case, with each side bearing its own costs and attorneys fees.

7. The agreement is contingent upon the Public Service Commission's approval.

 Staff originally filed a recommendation on June 23, 1994, addressing the Settlement Agreement and Joint Motion. Several days prior to the scheduled Agenda Conference, the parties requested that the item be deferred in order to address an issue not clearly stated in the Settlement Agreement or the recommendation.

 On August 8 and August 17, 1994, the parties provided Staff with further information. Because the operator of the plant notified the parties that he would no longer operate the plant, PUI began operating the plant on January 1, 1994. As of that date, the Association has not paid any costs of water service except for power expenses. Once PUI assumes ownership of the plant, the Association will be reimbursed for all electric power costs. PUI informed Staff that the total settlement amount that the Association will receive is $51,571.14, plus power costs. Any remaining funds in the escrow account will be released to PUI.

 This recommendation addresses the Settlement Agreement, the closure of Dockets Nos. 900400-WU and 900217-WS, and the need for the Wilderness Homeowners Association to file a new application for exemption with the Commission.

 **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission approve the Settlement Agreement?

**RECOMMENDATION:** Yes, the settlement agreement should be approved. (WASHINGTON, VON FOSSEN)

**STAFF ANALYSIS:** As noted in the case background, the key to resolving the pending litigation between the two parties (case No. 89-704) as well as both dockets pending before the Commission, is ownership of the water plant and lines within the Wilderness Development. The court case has been continued pending review of the settlement agreement by this Commission. If the agreement is approved by the Commission, the parties will enter into a joint stipulation dismissing the Circuit Court action.

 On March 18, 1994, the parties filed a Joint Motion to Approve Settlement Agreement. The intent of this agreement (Attachment A) is to resolve all litigation and administrative actions between the parties. Specifically, the agreement resolves ownership of the Wilderness water treatment plant and underlying land and disperses the escrow account held by PUI. Pursuant to the Agreement, the Association will convey the water plant and land to PUI. PUI will turn over to the Association $49,000 plus cost of service through January 1, 1994, from funds held in the escrow account, equalling $51,571.14. The Association will also be reimbursed for electric power expenses. Any remaining funds in the escrow account will be released to PUI.

 These actions will result in PUI owning and operating the treatment plant as contemplated in the original developer agreement. PUI will bill the individual customers in Phase I of Wilderness where it owns the water lines and provide bulk service to Phases II and III where Wilderness will retain ownership of the lines.

 Staff has reviewed the terms of the Settlement Agreement and recommends that the Commission approve the Settlement Agreement filed by the parties. The stipulation fully resolves the dispute between the parties and addresses the concerns indicated in Order No. 22166.

**ISSUE 2:** Should Docket No. 900217, the investigation docket, be closed?

**RECOMMENDATION:** Yes, if the Commission approves the settlement agreement, the dispute between the parties will be resolved and the docket may be closed. (WASHINGTON)

**STAFF ANALYSIS:** The scope of the investigation docket was to determine which party should properly provide service to which phase and at what rate. As previously stated, the key to resolving this issue was a determination of legal ownership of the treatment plant. Since approval of the Settlement Agreement resolves this issue and properly releases the escrow account wherein funds were held pending finalization of this docket, no further action is necessary and we recommend that the docket be closed.

**ISSUE 3:** Should Docket No. 900400, the exemption docket, be closed?

**RECOMMENDATION:** Yes, If the Commission approves the settlement agreement, the docket should be closed. However, Wilderness Homeowners Association, Inc. should file a new exemption request within 30 days of the date of the order. (VON FOSSEN)

**STAFF ANALYSIS:** The pending exemption request was filed in 1990 by a prior President of the Association. The request was based upon the scenario of the Association providing service to all phases of the Wilderness Development through its own on-site plant. Based upon the Settlement Agreement, the Association will retain ownership of the Phase II and Phase III lines. It will purchase water from PUI as a bulk customer and provide metered service to individual homes in Phase II and Phase III. Furthermore, the attorney for the Association has agreed that if a new application for exemption is required, the Association will file one.

 Since a new exemption request is needed based upon the revised billing scenario and based upon the age of the pending docket, we recommend that the present docket be closed and that the Association be required to file a new exemption request within 30 days of the date of the order.