



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SUDBURY OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: JULY 15, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER AND WASTEWATER (CLAPP, REDEMANN) *CLAPP*
DIVISION OF LEGAL SERVICES (CROSBY) *CROSBY*

RE: DOCKET NO. 981100-WS - APPLICATION FOR GRANDFATHER
CERTIFICATE TO OPERATE WATER AND WASTEWATER UTILITY IN
POLK COUNTY BY ROBERT W. ARNOLD SR. AND TRANSFER TO
GOVERNMENTAL AUTHORITY.
COUNTY: POLK

AGENDA: JULY 27, 1999 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\981100WS.RCM

CASE BACKGROUND

On May 14, 1996, The Board of County Commissioners of Polk County adopted a resolution pursuant to Section 367.171, Florida Statutes, declaring that privately owned water and wastewater utilities in that county were subject to the provisions of Chapter 367, Florida Statutes. The resolution was acknowledged by this Commission by Order No. PSC-96-0896-POF-WS, issued July 11, 1996, in Docket No. 960674-WS. Pursuant to Section 367.171, Florida Statutes, a utility subject to the jurisdiction of this Commission must obtain a certificate of authorization.

All County-franchised utilities and utility franchise applicants providing water and wastewater services within Polk County were informed of the Commission's new jurisdiction within the County. Mr. Robert W. Arnold Sr.'s utility was called Lake n' Golf Estates. Further, County-identified utilities were informed

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of the Commission meeting on August 20-22, 1996, which explained the new regulatory format under Commission jurisdiction. After the meeting in August, 1996, staff made several attempts at assisting Mr. Arnold in filing the grandfather certificate application, which included a certified letter, many telephone calls, and an individual meeting to explain application requirements.

On September 4, 1998, Robert W. Arnold, Sr., filed an application for grandfather certificates to provide water and wastewater service in Polk County pursuant to Section 367.171(2)(b), Florida Statutes. The application indicated that Mr. Arnold was renaming the utility from Lake n' Golf Estates to Robert W. Arnold, Sr. This is a Class C utility which provides water and wastewater services for one commercial and approximately 193 residential customers. According to the application, the utility has been providing water and wastewater services since 1979.

Mr. Arnold was advised of application deficiencies by letter on October 22, 1998, and a follow up letter of January 6, 1999. In December, Mr. Arnold stated that he intended to sell the utility to the City of Winter Haven. Commission Staff contacted the City to verify the sale, and was told that the utility would be purchased by the City. However, the City was concerned that Commission procedures had not been met by Mr. Arnold, and coordinated with the Commission in requiring Mr. Arnold to complete the PSC certification process prior to the submission of an application for transfer to government. Consequently, the deficiency corrections were received by the Commission on March 3, 1999.

Application for Transfer to Government packages were sent to both the City of Winter Haven and the utility on December 30, 1998. Officials from the City have been in contact with Commission staff concerning the status of the utility's application and the status of the City's efforts to purchase the utility. The actual application for transfer to government was submitted on May 4, 1999, and incorporated into this docket.

Since this is a grandfather application for certificates, rate base has not been set by the Commission. However, for informational purposes, the agreement for purchase and sale of the utility includes the purchase price of \$108,000.

Both the Florida Department of Environmental Protection and the Polk County Health Department report having outstanding issues of concern with the utility. However, both have reported that since the City of Winter Haven has stated that it will be

purchasing the utility and correcting or eliminating the concerns, they are not pursuing enforcement efforts upon the utility.

Pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code, annual reports and regulatory assessment fees (RAFs) are due from regulated utilities regardless of whether or not a certificate has been granted. This utility has been subject to this Commission's jurisdiction since May 14, 1996. On September 17, 1996, a letter explaining the Commission's RAFs and an application for fee pass-through were sent to Mr. Arnold. Additionally, letters concerning delinquent annual reports and RAFs with reporting forms enclosed were sent on April 10, 1998, and October 5, 1998. Mr. Arnold provided no response. However, when staff explained to Mr. Arnold that the unpaid RAFs would be raised as an issue in conjunction with approval of the transfer to governmental authority he had filed, he immediately asked for the amount he owed. Commission staff determined the amounts for May 14, 1996, through June 30, 1999, including penalties and interest to be \$8,986.44. A check for the full amount due was received on June 15, 1999.

The purpose of this recommendation is to approve the application for water and wastewater certificates and acknowledge the application for transfer of facilities to the City of Winter Haven.

DISCUSSION OF ISSUES

ISSUE 1: Should Robert W. Arnold, Sr., be ordered to show cause in writing within 21 days why he should not be fined for failing to file his annual reports for 1996, 1997, and 1998 in accordance with Rule 25-30.110, Florida Administrative Code?

RECOMMENDATION: No. A show cause proceeding should not be initiated. Further, the Commission should accept the affidavit filed by Robert W. Arnold, Sr., certifying the revenues for purposes of calculating regulatory assessment fees for 1996, 1997, and 1998 in lieu of the annual reports. (CROSBY)

STAFF ANALYSIS: Rule 25-30.110, Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31 of each year to file an annual report on or before

March 31 of the following year. Requests for extensions of time must be in writing and must be filed before March 31. One extension of 30 days is automatically granted. A further extension may be granted upon showing of good cause. Incomplete or incorrect reports are considered delinquent, with a 30-day grace period in which to supply the missing information.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3.00 per day.

Robert W. Arnold, Sr. has been subject to this Commission's jurisdiction since May 14, 1996. By Letters dated September 11, 1996, April 10, 1998, and October 5, 1998, staff notified the utility regarding the necessity of filing the annual reports and paying RAFs. To date, the annual reports have not been filed. Robert W. Arnold, Sr., has, however, filed an affidavit certifying the revenues for purposes of calculating the RAFs. The utility has also provided a check in the amount of \$8,956.44 as payment for the outstanding RAFs, penalties and interest.

Although regulated utilities are charged with knowledge of the Commission's rules and statutes, staff does not believe that the violation of Rule 25-30.110, Florida Administrative Code, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. As stated previously, Robert W. Arnold, Sr. is in the process of transferring its facilities to the City of Winter Haven. The transfer is scheduled to occur shortly after the certificates are issued in this docket. After the utility is transferred, the Commission will have no need for the information included in the annual reports. Robert W. Arnold, Sr. has provided an affidavit certifying the revenues for purposes of calculating the RAFs, and has also provided a check in payment for the outstanding RAFs, penalties and interest through June 30, 1999. Therefore, staff recommends that the Commission not order Robert W. Arnold Sr. to show cause for failing to timely file the annual reports, pursuant to Rule 25-30.110, Florida Administrative Code.

ISSUE 2: Should the application of Robert W. Arnold, Sr., for grandfather certificates in Polk County be approved?

RECOMMENDATION: Yes, the application for grandfather certificates should be approved and Water Certificate No. 612-W and Wastewater Certificate No. 528-S should be issued to Robert W. Arnold, Sr. (CLAPP, REDEMANN)

STAFF ANALYSIS: As discussed in the case background, the Board of County Commissioners of Polk County transferred jurisdiction of the privately owned water and wastewater utilities in Polk County to this Commission on May 14, 1996. After many letters and telephone calls from the Commission staff, on September 4, 1998, Robert W. Arnold, Sr., (Arnold or utility) applied for grandfather certificates to provide service in Polk County, in accordance with Section 367.171(2)(b), Florida Statutes.

The application for grandfather certificates contained several deficiencies, which included inadequate utility name, incomplete territory description, and no official county tax assessment map. These deficiencies were corrected on March 3, 1999.

The application is now in compliance with the governing statutes, Section 367.171, Florida Statutes, and other pertinent statutes and administrative rules concerning applications for grandfather certificates. The rules and statutes do not require noticing for grandfather certificate applications. The application contains a check in the amount of \$400, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

Rule 25-30.035(6), Florida Administrative Code, requires a utility to provide proof that it owns the land or has continued use of the land upon which its facilities are located. The application included a copy of a warranty deed that conveyed the property to Arnold as of January 6, 1992.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.035(9), (10), and (11), Florida Administrative Code. A description of the territory requested by the applicant is appended to this recommendation as Attachment A.

Staff contacted the Department of Environmental Protection (DEP) and learned that there is an outstanding warning letter and a pending permit application for the wastewater system. However, as discussed in the case background, since the City of Winter Haven

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has stated that it will be purchasing the utility and installing new lines to bypass the wastewater treatment facility, DEP is not pursuing enforcement of the warning letter.

The Polk County Health Department is responsible for monitoring the utility's water system. Mr. Lewis Taylor of the Health Department reported that there is a consent agreement outstanding with the utility. Enforcement of the consent agreement is not being pursued since the City of Winter Haven has stated that it will be purchasing the utility and interconnecting the water system. The interconnection will eliminate the problem with the current water system. The application for transfer of the facilities to the City of Winter Haven will be discussed in Issue 3 of this recommendation.

Based on the foregoing, staff recommends that Robert W. Arnold, Sr. be granted Water Certificate No. 612-W and Wastewater Certificate No. 529-S to serve the territory described in Attachment A.

ROBERT W. ARNOLD SR.

WATER AND WASTEWATER TERRITORY DESCRIPTION

POLK COUNTY

Township 28 South, Range 25 East
In the NE 1/4 of Section 1

From the Northeast Corner of the NE 1/4 run West along the North line a distance of 430 feet to the NE corner of Lake and Golf Estates parcel, and the Point of Beginning (POB), thence run North $89^{\circ}46'$ West a distance of 538.28 feet, thence run North $89^{\circ}46'$ West 559.0 feet, to the NW corner of said parcel, thence run South $00^{\circ}02'18''$ West a distance of 660.25 feet, thence run South $89^{\circ}57'42''$ East, a distance of 44.0 feet, thence run South $00^{\circ}02'18''$ West, a distance of 646.38 feet, to the SW corner of said parcel, thence run South $89^{\circ}57'42''$ East, a distance of 479.0 feet, thence continue South $89^{\circ}57'42''$ East, a distance of 295.72 feet, thence along a curve concave Southerly whose radius is 1969.06 feet, thence run Northeasterly along said curve an arc distance of 280.18 feet (central angle $5^{\circ}03'48''$) to its intersection with the West right-of-way of the Southwest Florida Management District Canal, also the SE corner of said parcel, thence run North $00^{\circ}03'48''$ East a distance of 1,248.72 feet to the POB.

ISSUE 3: Should the Commission approve the application for transfer of facilities from Robert W. Arnold, Sr. to the City of Winter Haven?

RECOMMENDATION: Yes, the application for transfer of facilities from Robert W. Arnold, Sr. to the City of Winter Haven should be approved as a matter of right. However, because the transfer has not yet occurred, the docket should remain open and the certificates should remain active pending receipt of proof that the closing has occurred. Robert W. Arnold, Sr. should be required to provide proof of the closing within six months of the issuance date of the order memorializing the action taken at this agenda conference. Upon receipt of proof that the transfer has taken place, the docket should be closed administratively. In addition, Robert W. Arnold, Sr. should be required to pay all outstanding RAFs within 30 days of the date of closing of the transfer. If the RAFs are not paid within 30 days, this matter should be referred to the Comptroller's office for collection.

STAFF ANALYSIS: The application for transfer to a governmental authority, received May 4, 1999, contained several deficiencies which were corrected by June 22, 1999. The application is now in compliance with the governing statute, Section 367.071(4)(a), Florida Statutes, and other pertinent statutes and administrative rules concerning applications for transfer to governmental authorities. The rules and statutes do not require noticing for transfers to government authorities, nor do they require filing fees.

The original closing date for the transfer was June 1, 1999. However, the City intends to have its lift station and connection lines in place prior to closing on the transfer. Due to delays in securing a permit from DEP for the lift station, the closing had to be postponed. The City has estimated that the closing should take place no later than August 31, 1999.

The City has specifically requested that the Commission conclude its business with the utility prior to the final closing. Although the closing appears imminent, there may be additional delays that could change the closing date.

Staff recommends that the Commission approve the transfer of facilities from Robert W. Arnold, Sr., as a matter of right, pursuant to Section 367.071, Florida Statutes. Further, staff recommends that Docket No. 981100-WS should remain open and the Certificates should remain active pending receipt of proof that the

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closing has occurred. Robert W. Arnold, Sr. should be required to provide proof that the closing has taken place within six months of the date of the order issued in this docket.

Further, the utility is responsible for the filing of RAFs and annual reports from the time the Commission received jurisdiction. This utility has been subject to this Commission's jurisdiction since May 14, 1996. On June 15, 1999, a check was received from Mr. Arnold in the amount of \$8,956.44 as payment for all past due RAFs, penalties, and interest from May 14, 1996, through June 30, 1999. The owner is responsible for paying RAFs from July 1, 1999, until the date of actual closing on the transfer to the City of Winter Haven. Staff recommends that Robert W. Arnold, Sr. be required to pay all outstanding RAFs within 30 days of the date of closing of the transfer. If the RAFs are not paid within this time, this matter should be referred to the Comptroller's office for collection by the collection agent.

ISSUE 4: What rates and charges should be approved for this utility?

RECOMMENDATION: The rates and charges as detailed in the staff analysis should be approved. The tariff should be effective for services rendered or connections made on or after the stamped approval date of the tariff. (CLAPP)

STAFF ANALYSIS: The rates this utility had in effect on the date the Florida Public Service Commission received jurisdiction should be approved as the appropriate rates and charges for this utility. The Polk County Utilities Commission did not grant a franchise agreement to this utility. However, the rates and charges submitted during the franchise application process to the Polk County Utilities Commission on September 9, 1994, are the same that are currently being charged. The utility reads the meters every February and bills the customers once per year. The utility's average monthly combined bill of \$20.84 for 5,000 gallons is lower than twelve of the fifteen other utilities providing water and wastewater services in Polk County according to the Comparative Cost Statistics of January 1999. The utility's rates and charges are as follows:

Annual Service Rates Billed Annually

Water and Wastewater:

Residential Service:

Flat rate	\$250.00 for 60,000 gallons
Gallage rate	\$0.99 per additional 1,000 gallons

Commercial Service:

Flat rate	\$250.00 for 60,000 gallons
Gallage rate	\$0.99 per additional 1,000 gallons

Customer Deposits

N/A - deposits are not required

Miscellaneous Service Charges

Initial Connection Fee:	\$ 15.00
Normal Reconnection Fee:	\$ 15.00
Violation Reconnection Fee:	\$ actual cost
Premises Visit Fee:	\$ 10.00

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Service Availability Charge

None. There is no possibility of extension of service as all lots in subdivision are developed.

The utility has filed a tariff which reflects the above rates and charges. Staff recommends that they be approved as submitted. Staff further recommends that the utility be required to retain these rates and charges until authorized to change by the Commission. The tariff should be effective for service rendered on or after the stamped approval date on the tariff sheets.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending receipt of proof, including actual closing date, of the transfer of the utility to the City of Winter Haven. Upon receipt of proof that the closing has occurred, Certificates Nos. 612-W and 528-S should be canceled and the docket should be closed administratively. (CRCSBY)

STAFF ANALYSIS: Upon receipt of proof that the closing of the transfer has occurred, no further issues regarding this docket exist except for cancellation of the certificates and closing the docket. Therefore, staff recommends that upon receipt of proof that the closing has taken place, the certificates should be canceled and the docket closed administratively.