

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
certificate to provide water
service in Highlands County by
Holmes Utilities, Inc.

DOCKET NO. 960244-WU
ORDER NO. PSC-97-0568-FOF-WU
ISSUED: May 20, 1997

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER GRANTING CERTIFICATE, SETTING RATES
AND CHARGES, REQUIRING PAYMENT OF 1995 AND 1996 REGULATORY
ASSESSMENT FEES AND FILING OF 1996 ANNUAL REPORT,
AND CLOSING DOCKET

BY THE COMMISSION:

On February 27, 1996, Holmes Utilities, Inc. (Holmes or utility) filed an application for a certificate to provide water service in Highlands County. Holmes is an existing Class C utility which is currently providing water service to 37 single family residences and one clubhouse in the Country Walk Subdivision. At buildout, the utility anticipates serving 89 single family residences and one clubhouse in the Subdivision.

The utility has been in existence providing water service since 1987. Its facilities consist of one water treatment plant and one water transmission and distribution system. Wastewater is provided by septic tank.

According to the application, the current owners purchased the utility on August 1, 1995, and were not aware that the system was subject to Commission regulation. We became aware of the utility's existence due to an inquiry by a customer regarding Commission regulation of the utility. Holmes filed an application for a certificate on February 27, 1996, after being advised that it is subject to this Commission's jurisdiction and that it is in violation of Section 367.031, Florida Statutes, for providing water service without a certificate. Holmes' apparent violation of Section 367.031, Florida Statutes, is discussed later in this Order.

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FPSC-RECORDS/REPORTING

Show Cause

As stated previously, Holmes is in apparent violation of Section 367.031, Florida Statutes, which states, in part, "Each utility subject to the jurisdiction of the commission must obtain . . . a certificate of authorization to provide water or wastewater service." The system has been in existence since 1987 and has been providing water service without a certificate since that time. Holmes Utilities has been providing water service to the residents of Country Walk Subdivision without a certificate since it purchased the system in August of 1995. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure of Holmes to obtain a certificate prior to providing service appears to be due to lack of knowledge of the statutes and Commission rules. Holmes became aware of this Commission's regulation and of the necessity to obtain a certificate when it was contacted by the Commission staff as the result of an inquiry from a customer regarding whether or not the utility was jurisdictional. The application was filed by the utility shortly after it was contacted by the Commission Staff.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not believe that the violation of Section 367.031, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Holmes Utilities filed the application upon becoming aware of the Commission's jurisdiction, which was a only few months after purchase of the utility. In addition, the utility has been very responsive to requests for information. Therefore, a show cause proceeding will not be initiated against Holmes for failure to obtain a certificate prior to providing water service in Highlands County.

Application

Except as discussed previously, the application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$750, pursuant to Rule 25-30.020, Florida Administrative Code. Holmes has provided evidence that the utility owns the land upon which the utility's facilities are located, as required by Rule 25-30.034(1)(e), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.034(1)(h), (I) and (j), Florida Administrative Code. A description of the territory Holmes has requested to serve is shown on Attachment A of this Order, which by reference is incorporated herein.

Holmes provided proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code, including notice to the customers in the proposed territory. No objections to the application have been received and the time for filing such has expired.

Regarding the Holmes' financial and technical ability, the application states that the utility has 100% financial and technical backing of the owner's company, Pugh Utilities Services, Inc. (Pugh Utilities), which was established in 1979 and incorporated on September 1, 1995. According to the application, Pugh Utilities has a net worth of \$350,000. In addition, the application states that the owners and employees of Pugh Utilities have over 100 combined years of water and wastewater experience. Therefore, it appears that Holmes has the financial and technical ability to continue to operate the water system and provide satisfactory service to its customers.

According to the Department of Environmental Protection (DEP), the utility's water facilities are in satisfactory condition and there are no outstanding violations against the utility. However, the utility is experiencing a problem with copper sulfide and iron sulfide. The problem occurs when sulfur, which is naturally present in water, reacts with the copper and iron in the customers' pipes. According to DEP, the utility is in compliance with DEP's standards regarding these secondary contaminants. These contaminants do not pose a health risk to the customers, but are recognized as an aesthetic problem in the quality of the water. Based upon DEP's recommendation, the utility has attempted to

correct the problem by injecting an inhibitor into the water. This is the least costly method available to correct the problem. According to the DEP representative, this has helped but has not eliminated the problem.

There are two additional alternatives which the utility may use to correct the problem. First, the utility could increase the size and depth of the well to reach a deeper source of water which may not contain the same level of sulfur. The DEP representative estimates that this would cost approximately \$10,000. Second, the utility could install a filtration system on the well. This would cost approximately \$20,000 to \$50,000. However, there is no guarantee that either of these alternatives would correct the problem.

The DEP representative met with the customers last year to discuss the problem and possible solutions. Nineteen customers attended the meeting. Approximately half of the customers indicated they would be willing to pay higher rates in order to correct the problem. However, some of the customers have already installed home filtration systems and are not willing to incur any additional cost.

Because the utility is in compliance with DEP's standards and the contaminants do not pose a health risk, DEP cannot require the utility to implement either of above methods at this time. Additionally, to date, the Commission has not received any complaints from the utility's customers. According to the utility's owner, the utility plans to conduct additional testing to monitor the problem. In consideration of these facts, we do not find that action by the Commission is necessary at this time. However, the Commission is aware of the situation in the event it is raised by the customers or the utility in future proceedings.

Based on the foregoing, we find that it is in the public interest to grant Holmes Certificate No. 579-W to serve the territory described in Attachment A of this Order.

Rates and Charges

The utility's present water rates and charges became effective in August of 1995, when the current owners purchased the system. These rates and charges are as follows:

WATER
Monthly Rates

Residential and General Service

Base Facility Charge
Meter Size:

5/8" x 3/4" \$ 8.00

Gallonge Charge
(Per 1,000 Gallons)

0 - 5,000 Gallons	\$ 1.40
5,001 - 10,000 Gallons	\$ 1.70
10,001 - 15,000 Gallons	\$ 2.00
Over 15,000 Gallons	*

*Gallonge Charge increases by \$0.30 for each
5,000 Gallon Block over 15,000 gallons.

Miscellaneous Service Charges

Initial Connection Fee	\$ 15.00
Normal Reconnection Fee	\$ 15.00
Violation Reconnection Fee	\$ 15.00
Premises Visit Fee (in lieu of disconnection)	\$ 10.00

Service Availability Charges

Customer Connection (Tap-in) Charge 5/8" x 3/4" Meter	\$550.00
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We find these rates and charges to be reasonable and they are approved. Holmes shall continue to charge these rates and charges until authorized to change by this Commission in a subsequent proceeding. The utility has filed a tariff which reflects the rates and charges approved herein. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

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Regulatory Assessment Fees and Annual Report

Pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code, annual reports and regulatory assessment fees are due from regulated utilities regardless of whether a certificate has been granted. The utility has been subject to this Commission's jurisdiction since it was established in 1987, although we did not learn of its existence until 1995. Holmes Utilities was advised of the Commission's jurisdiction and its responsibility to obtain a certificate in September of 1995. Holmes has not paid regulatory assessment fees for 1995 or 1996. The utility has, however, filed a 1995 annual report.

Therefore, Holmes shall remit regulatory assessment fees for 1995, from September 1, 1995 through December 31, 1995, within 45 days of the date of this Order. In addition, Holmes shall remit regulatory assessment fees for 1996 and file a 1996 annual report within 45 days of the date of this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Holmes Utilities, Inc., 760 Henscratch Road, Lake Placid, Florida 33852, is hereby granted Certificate No. 579-W to provide water service to the territory shown on Attachment A of this Order. It is further

ORDERED that the rates and charges set forth in the body of this Order are hereby approved. Holmes Utilities, Inc. shall charge these rates and charges until authorized to change by this Commission in a subsequent proceeding. The rates and charges shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that Holmes Utilities, Inc. shall pay regulatory assessment fees for 1995, from September 1, 1995, through December 31, 1995, within 45 days of the date of this Order. It is further

ORDERED that Holmes Utilities, Inc. shall pay regulatory assessment fees for 1996, within 45 days of the date of this Order. It is further

ORDERED that Holmes Utilities, Inc. shall file an annual report for 1996 within 45 days of the date of this Order. It is further

ORDERED that Docket No. 960244-WU is hereby closed.

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By ORDER of the Florida Public Service Commission, this 20th
day of May, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



Kay Flynn, Chief
Bureau of Records

(S E A L)

ALC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater 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.

ATTACHMENT A

HOLMES UTILITIES, INC.

HIGHLANDS COUNTY

TERRITORY DESCRIPTION

Township 36 South, Range 29 East, Section 16

Begin at the NW corner of the SW 1/4 of the SW 1/4 of said Section 16; thence

- N 88°22'50" E, along the North line of the said SW 1/4 of the SW 1/4 for a distance of 1,328.55 feet to a point marking the NE corner of the SW 1/4 of the SW 1/4 of Section 16, Township 36 South, Range 29 East; thence run
- S 00°02'11" E, along the East line of the SW 1/4 of the SW 1/4 for a distance of 1,272.47 feet to a point on the Government Meander Line of Lake Carrie; thence run
- S 78°27'29" W, a distance of 273.91 feet along said Government Meander Line to a point; thence run
- S 88°22'28" W, a distance of 1,055.35 feet to the SW corner of Section 16, Township 36 South, Range 29 East; thence run
- N 00°14'24" W, a distance of 1,319.68 feet to the Point of Beginning.

Said portion containing 40.02 acres, more or less.