

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of abandonment of
water services in Alachua County
by Santa Fe Hills Water System.

DOCKET NO. 020223-WU
ORDER NO. PSC-02-1297-FOF-WU
ISSUED: September 23, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS;
DECLINING TO ASSESS PENALTIES; DECLINING TO REQUIRE FILING OF
ANNUAL REPORTS; AND CLOSING THE DOCKET

BY THE COMMISSION:

Santa Fe Hills Water System (Santa Fe Hills or utility) was a Class C water utility that served approximately 50 residential connections within the Santa Fe Hills subdivision near the City of Alachua in Alachua County (County).

We gained jurisdiction in Alachua County on June 30, 1992. By Order No. PSC-93-1380-FOF-WU, issued September 20, 1993, in Docket No. 930569-WU, the utility was granted Grandfather Certificate No. 557-W and initial rates and charges were approved using a base facility/gallonage charge rate structure.

On February 18, 2002, Mr. Larry A. Gonzales, the son of the owner of the utility, gave notice to Alachua County that the utility was to be abandoned within sixty days. On March 11, 2002, we received notice of the owner's intent to abandon. On March 21, 2002, the County of Alachua was appointed receiver by the Circuit Court in the Eight Judicial Circuit in and for Alachua County, Florida. The term of the receivership began on April 19, 2002.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

This docket was opened in order to acknowledge the notice of abandonment, acknowledge the appointment of the County as the Receiver of the utility, and to cancel the certificate. By Order No. PSC-02-0604-FOF-WU, issued May 2, 2002, we acknowledged the notice of abandonment, the appointment of the County as the Receiver, and canceled Certificate No. 557-W. In addition, we left the docket open so that our staff could continue its collection efforts with respect to outstanding annual reports and regulatory assessment fees (RAFs). We have jurisdiction to consider this matter pursuant to Section 367.161, Florida Statutes.

According to our records, Santa Fe Hills failed to file its annual reports for the years 1993 through 2001, and failed to pay its RAFs for the years 1996 through 1998, and 2000 through April of 2002. On July 24, 2002, payment in the amount of \$3,349.21 was received by our Division of the Commission Clerk and Administrative Services. This amount represented the outstanding amount of RAFs, penalties, and interest that was owed by Santa Fe to date.

Rule 25-30.110, Florida Administrative Code, requires utilities subject to our jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to timely file a complete annual report is subject to penalties, absent demonstration of good cause for noncompliance.

Santa Fe is in apparent violation of Rule 25-30.110(3), Florida Administrative Code, for the failure to file its annual reports for the years 1993 through 2001.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to timely file its 1995 and 1996 annual reports, would meet the standard for a "willful violation." 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, Florida Administrative Code, 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 "in 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. Section 367.161, Florida Statutes, authorizes this 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 Commission rule, order or provision of Chapter 367, Florida Statutes.

Moreover, 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 per day, based on the number of calendar days elapsed from March 31, or from an approved extended filing date. As of the date of the September 3, 2002 Agenda Conference, for the utility's annual reports for the years 1993 through 2001, the total penalty would be \$43,659, calculated as follows:

YEAR	CALCULATION	AMOUNT
1993	3,078 x \$3/day	\$9,234
1994	2,713 x \$3/day	\$8,139
1995	2,348 x \$3/day	\$7,044
1996	1,982 x \$3/day	\$5,946
1997	1,617 x \$3/day	\$4,851
1998	1,252 x \$3/day	\$3,756
1999	886 x \$3/day	\$2,658
2000	521 x \$3/day	\$1,563
2001	156 x \$3/day	\$468
	TOTAL DUE	\$43,659

The penalty, if it were assessed, would continue to accrue until such time as Santa Fe files its annual reports for the years

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1993 through 2001. It should be noted that pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, we may, in our discretion, impose greater or lesser penalties for such noncompliance.

We believe, however, that the circumstances in this case are such that show cause proceedings should not be initiated at this time, nor should penalties be assessed. As discussed previously, by Order No. PSC-02-0604-FOF-WU, issued May 2, 2002, we acknowledged the utility owner's notice of abandonment and the appointment of the County as the Receiver, effective April 19, 2002. In addition, we acknowledged that pursuant to Section 367.022(2), Florida Statutes, utility systems owned, managed, or controlled by governmental authorities are exempt from the Commission's regulation. Thus, we found it appropriate to cancel the utility's certificate since the County of Alachua is a governmental authority exempt from our regulation.

The utility has made a good faith effort to cooperate with our staff, and as mentioned previously, was able to pay in full the entire amount of RAFs, penalties, and interest owed. Further, because the utility is no longer subject to our regulation, the information contained in the annual reports for the years 1993 through 2001 is no longer needed.

For the foregoing reasons, we find that the apparent violation of Rule 25-30.110(3), Florida Administrative Code, does not rise in these circumstances to the level of warranting the initiation of a show cause proceeding. Therefore, we shall decline to order Santa Fe to show cause, in writing within 21 days, why it should not be fined for its failure to file its annual reports for the years 1993 through 2001. Further, the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, shall not be assessed, as the information contained in the delinquent reports is no longer needed for the ongoing regulation of the utility. Additionally, Santa Fe shall not be required to file its annual reports for the years 1993 through 2001.

Because no further action is necessary, this docket shall be closed.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that Santa Fe Hills Water System's apparent violation of Rule 25-30.110(3), Florida Administrative Code, does not rise in these circumstances to the level of warranting the initiation of a show cause proceeding. It is further

ORDERED that we shall decline to order Santa Fe Hills Water System to show cause, in writing within 21 days, why it should not be fined for its failure to file its annual reports for the years 1993 through 2001. It is further

ORDERED that the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, shall not be assessed, as the information contained in the delinquent reports is no longer needed for the ongoing regulation of the utility. It is further

ORDERED that Santa Fe shall not be required to file its annual reports for the years 1993 through 2001. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 23rd day of September, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

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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 the Commission Clerk and Administrative Services, 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 the Commission Clerk and Administrative Services 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.