

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of delinquent regulatory assessment fees for Hunter Creek Utilities, LLC in Charlotte County.

DOCKET NO. 030449-WS
ORDER NO. PSC-03-0962-FOF-WS
ISSUED: August 25, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS;
REFERRING DELINQUENT REGULATORY ASSESSMENT FEES AND ASSOCIATED
PENALTIES AND INTEREST TO THE DEPARTMENT OF FINANCIAL SERVICES;
AND CLOSING THE DOCKET

BY THE COMMISSION:

BACKGROUND

Hunter Creek Utilities, LLC (Hunter Creek) is a Class C Water and Wastewater utility located in Charlotte County. Hunter Creek was granted an original certificate of operation by Order No. PSC-99-0756-FOF-WS, issued on April 19, 1999, in Docket No. 980731-WS.

Hunter Creek has failed to pay its regulatory assessment fees (RAFs) for the time period of 1999, 2000, 2001, and January 1, 2002, through November 25, 2002. Pursuant to Rule 25-30.120(2), Florida Administrative Code, the obligation to remit RAFs for any year shall apply to any utility which is subject to this Commission's jurisdiction on or before December 31 of that year.

On November 19, 2001, we contacted John Leonette, the utility manager, via certified mail, regarding the delinquent regulatory assessment fees. We never received a response. On December 20,

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2002, we again contacted Mr. Leonette. On January 7, 2003, David Olmsted, an attorney representing the party foreclosing on the utility, contacted staff stating that his clients undertook a foreclosure action on Hunter Creek on July 26, 2002.

This Order addresses whether Hunter Creek should be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to remit its regulatory assessment fees as required by Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code. We have jurisdiction to pursue collection efforts for the failure to timely pay RAFs pursuant to Sections 367.145 and 367.161, Florida Statutes.

SHOW CAUSE ISSUE

Pursuant to Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each water and wastewater utility shall remit annually RAFs in the amount of 0.045 of its gross operating revenue. Pursuant to Rule 25-30.120(2), Florida Administrative Code, "[t]he obligation to remit the [RAFs] for any year shall apply to any utility which is subject to [the] Commission's jurisdiction on or before December 31 of that year or for any part of that year" Accordingly, Hunter Creek is responsible for RAFs for the time period of 1999, 2000, 2001, and January 1, 2002, through November 25, 2002. In failing to remit the RAFs for this period, Hunter Creek is in apparent violation of the above-referenced statutory and rule provisions.

Furthermore, pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.

2. The amount of interest to be charged is 1 percent for each 30 days or fraction thereof, not to exceed a total of 12 percent per annum.

The calculation of the RAFs, plus penalties and interest owed by Hunter Creek for the period indicated above, is set out below. As of August 5, 2003, the amounts due are as follows:

TIME PERIOD	RAF AMOUNT	PENALTY	INTEREST	TOTAL
1999 - WATER	\$410.72	\$102.68	\$168.39	\$681.79
1999 - WASTEWATER	\$275.09	\$68.77	\$112.78	\$456.64
2000 - WATER	\$428.13	\$107.03	\$124.16	\$659.32
2000 - WASTEWATER	\$192.33	\$48.08	\$55.78	\$296.19
2001 - WATER	\$452.03	\$113.01	\$76.84	\$641.88
2001 - WASTEWATER	\$301.37	\$75.34	\$51.23	\$427.94
January - November 2002 - WATER	\$397.53	\$99.38	\$19.88	\$516.79
January - November 2002 - WASTEWATER	\$265.04	\$66.26	\$13.25	\$344.55
TOTAL DUE				\$4,025.10

Analysis on Whether Show Cause Action Should be Initiated

As indicated above, Hunter Creek is in apparent violation of Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, for failure to submit RAFs.

Utilities are charged with the knowledge of our 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 pay RAFs, plus applicable penalties and interest, 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, F.A.C., Relating to Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc.; we 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

With respect to Hunter Creek's failure to remit RAFs and the penalties and interest incurred, we find that the circumstances in this case are such that show cause proceedings should not be initiated.

Numerous attempts to contact John Leonette, Utility Manager of Hunter Creek, have been made via certified mail. On January 7, 2003, we received a letter from David Olmsted, an attorney representing the party foreclosing on the utility, stating that his clients undertook a foreclosure action on Hunter Creek on July 26, 2002. As such, we believe that further collection efforts would not be cost effective. We believe that any further attempts to collect would be futile, because in this situation, the corporate entity no longer exists.

For these reasons, we find that show cause proceedings shall not be initiated against Hunter Creek for its apparent violation of the aforementioned statutes and Commission rules. Additionally, we shall refer the utility's unpaid RAFs and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated against Hunter Creek Utilities, LLC for its failure to submit regulatory assessment fees for the time period of 1999, 2000, 2001, and January 1, 2002, through November 25, 2002. It is further

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ORDERED that the delinquent regulatory assessment fees and associated penalties and interest shall be referred to the Florida Department of Financial Services for permission to write off the accounts as uncollectible. It is further

ORDERED that this Docket is hereby closed.

By ORDER of the Florida Public Service Commission this 25th Day of August, 2003.

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

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

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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.

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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.