

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Exemption) DOCKET NO. 951252-SU
from Florida Public Service) ORDER NO. PSC-96-0251-FOF-SU
Commission Regulation for) ISSUED: February 21, 1996
Provision of Wastewater Service)
in Lee County for Three "S")
Disposal, Inc. by Lee County,)
Receiver)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER ACKNOWLEDGING APPOINTMENT OF
SUCCESSOR RECEIVER, CANCELLING CERTIFICATE
AND
APPROVING REQUEST FOR EXEMPTION

BY THE COMMISSION:

BACKGROUND

Three "S" Disposal, Inc., (Three "S") is a Class C utility, providing wastewater service to approximately 202 customers in Bonita Springs, Lee County, Florida. The utility's 1994 annual report lists annual revenues of \$272 and a net operating loss \$13,153.

The utility has held Certificate No. 444-S since February 20, 1989. On October 9, 1990, Three "S" noticed the Commission of its intent to abandon the system. On December 6, 1990, Lee County Circuit Court, Twentieth Judicial Circuit, appointed Bonita Springs Utilities, Inc., (BSU) (then Bonita Springs Water System, Inc.) as receiver. On March 4, 1991, by Order No. 24189, we acknowledged the abandonment of Three "S" and the appointment of BSU as receiver. On July 3, 1991, the same court, R. Wallace Pack, Circuit Judge, granted BSU's Motion for Withdrawal as receiver and appointed Lee County (County) as the new receiver. On October 20, 1995, the County filed a request on behalf of Three "S" for an exemption from Florida Public Service Commission regulation pursuant to Chapter 367.022(2), Florida Statutes.

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APPOINTMENT ACKNOWLEDGMENT

Subsequent to the court's appointment of BSU as the original receiver for Three "S," but prior to its appointment of Lee County as the utility's successor receiver, the court, on May 10, 1991, appointed the State of Florida, by and through the Department of Environmental Regulation (DER) (now Department of Environmental Protection), as receiver. Considerable effort was expended by Lee County, the DER and Commission staff to resolve the issue of receivership for Three "S". However, until the present, all parties inadvertently overlooked the need to apply for acknowledgement by the Commission of the appointment of Lee County as the new receiver.

Attached to its petition for exemption, Lee County provided a copy of the amended order by which the court appointed Lee County as the successor receiver for Three "S". The court granted the County the following authority:

1. to provide and maintain wastewater service in compliance with all applicable permits, regulations and statutes including making extensions, expansions, repairs, replacements and improvements as appropriate and necessary;
2. to collect rates, fees, charges and deposits for Three "S" wastewater service in accordance with applicable state laws;
3. to borrow money against utility assets and to enter into contracts and agreements and accept gifts and contributions on behalf of the utility;
4. to retain and pay, from revenues collected from the customers of Three "S", all necessary and reasonable operating expenses to ensure continued efficient, effective and environmentally sound operation of the utility;
5. to handle all court actions and to apply for and obtain all applicable permits, certificates and licenses; and
6. to ultimately connect Three "S" to any public or private wastewater system with capacity to serve the utility's customers at which time the receivership is to be terminated.

Section 367.165(3), Florida Statutes, provides that a receiver operating an abandoned utility shall be considered to hold a temporary authorization from the Commission. Rule 25-30.090(5), Florida Administrative Code, provides that during the pendency of the receivership, the receiver shall be responsible for fulfilling the utility's obligations pursuant to Chapter 367, Florida Statutes, and Chapter 25-30, Florida Administrative Code. The County appears, ever since its appointment, to be adequately fulfilling its obligations as the receiver for Three "S." The utility's annual reports have been timely filed and regulatory assessments fees are paid-up and current. There are no outstanding fees, penalties or customer complaints against the utility.

Accordingly, we find it appropriate to acknowledge the withdrawal of BSU as receiver for Three "S" Disposal, Inc., and the appointment of Lee County as the current successor receiver.

EXEMPTION APPROVAL

Lee County, as the receiver for Three "S", filed an application on October 20, 1995, on behalf of Three "S" for an exemption from Commission regulation pursuant to Section 367.022(2), Florida Statutes. Subsequently, the County submitted a \$200.00 filing fee. However, a filing fee is not required. Thus, we find it appropriate to return to the County its check in the amount of \$200.

Section 367.022(2), Florida Statutes, and Rule 25-30-060(2), Florida Administrative Code, provide an exemption for systems owned, operated, managed, or controlled by governmental authorities. Rule 25-30.090(6), Florida Administrative Code, provides that systems operated by governmental authorities which have been appointed as receivers by the circuit court, upon request, shall be found exempt pursuant to Section 367.022(2), Florida Statutes.

Therefore, we further find it appropriate to approve Lee County's request as receiver of Three "S" for an exemption from Commission regulation pursuant to Section 367.022(2), Florida Statutes and to order that Certificate No. 444-S be cancelled. We request the County notify the Commission within 30 days if the system is transferred to an entity which would be regulated by the Commission. As no further action is required, this docket shall be closed.

Based on the foregoing, it is

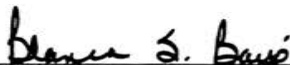
ORDERED by the Florida Public Service Commission that the appointment of Lee County as the successor receiver for Three "S" Disposal, Inc., is hereby acknowledged. It is further

ORDERED that the request of Lee County for exemption from Commission regulation pursuant to Section 367.022(2), Florida Statutes, as receiver for Three "S" Disposal, Inc., is approved. It is further

ORDERED that Certificate No. 444-S shall be cancelled. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 21st day of February, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.