

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

MEMORANDUM

December 5, 1996

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

FROM: DIVISION OF WATER & WASTEWATER (BRADY, TOMLINSON) *OCM CT*
DIVISION OF LEGAL SERVICES (CROSBY) *JS*

RE: DOCKET NO. 96190-SU - SKY ACRES ENTERPRISES d/b/a *JS*
TERRACE PARK VENTURES - APPLICATION FOR CERTIFICATE TO
PROVIDE WASTEWATER SERVICE
COUNTY: PASCO

AGENDA: DECEMBER 17, 1996 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE

CRITICAL DATES: JANUARY 28, 1997 - STATUTORY DEADLINE FOR AN
ORIGINAL CERTIFICATE

SPECIAL INSTRUCTIONS: I\PSC\WAW\WP\96190-SU

DOCUMENT NUMBER-DATE

13008 DEC-5 96

FPSC-RECORDS/REPORTING

CASE BACKGROUND

Sky Acres Enterprises d/b/a Terrace Park Ventures (Sky Acres or the utility) is a Class C utility providing wastewater service to 132 residential customers and 1 general service customer in a mobile home park known as Terrace Park Estates in Pasco County. Water service is provided directly to customers by Pasco County.

On October 5, 1995, the utility filed an application for an original wastewater certificate pursuant to Section 367.045, Florida Statutes, for a utility in existence and charging rates. Sky Acres completed its response to staff's several notifications of deficiencies on October 30, 1996. Therefore, the official filing date for the utility's application for certificate is October 30, 1996. Pursuant to Section 367.031, Florida Statutes, the Commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application.

The utility's wastewater treatment system has been in existence since 1982. Sky Acres obtained land in Pasco County to build the mobile home park in 1981 under the name of Amanda Company, Inc. Originally the park was named Terrace Grove. The park's name was later changed to Terrace Park Estates and the utility's name has been changed to Sky Acres, a Florida limited partnership. To build and operate the wastewater treatment plant, Sky Acres originally obtained permits from what is now known as Florida's Department of Environmental Protection (DEP). It was Sky Acres understanding that, due to the small size of its system and the fact that the system was operated in a nonprofit manner, DEP had sole jurisdiction.

The utility came to the attention of Commission staff when it attempted to double its rates without notice early in 1995. According to the utility, it had been cited with several DEP violations and was attempting to comply with the required upgrades by increasing its rates. The utility stated it had wanted the homeowners to assume ownership and operation of the utility plant but the homeowners association had not agreed. By letter dated April 22, 1995, staff informed Sky Acres that it appeared it did not qualify for an exemption and, therefore, needed to complete an application for a certificate of authorization. The initial application was filed on October 5, 1995, and completed on October 30, 1996. Pending the certification process, Sky Acres has not put its proposed rate increase into effect.

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Issue 1 addresses the utility's apparent violation of Section 367.031, Florida Statutes, in that it is operating a wastewater utility without a certificate.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Sky Acres Enterprises d/b/a Terrace Park Ventures to show cause, in writing within twenty days, why it should not be fined for violation of Chapter 367.031, Florida Statutes?

RECOMMENDATION: No, show cause proceedings should not be initiated. (CROSBY)

STAFF ANALYSIS: As stated in the case background, Sky Acres 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 from the commission a certificate of authorization to provide water or wastewater service." Sky Acres has been providing wastewater service to the residents of Terrace Park Estates since June of 1982 without a certificate. 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.

Sky Acres' failure to obtain a certificate prior to providing service appears to be due to the belief that it was exempt from our regulation because of its small size and the fact that it operated the wastewater facility in a nonprofit manner. After being informed by the Commission staff that it did not qualify for exemption pursuant to Section 367.022, Florida Statutes, Sky Acres filed an application for a certificate of authorization.

Although Sky Acres failed to obtain a certificate prior to providing service, staff does 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. Therefore, staff recommends that the Commission not order Sky Acres to show cause for failing to obtain a certificate prior to providing wastewater service.

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ISSUE 2: Should the application of Sky Acres Enterprises d/b/a Terrace Park Ventures for a wastewater certificate be granted?

RECOMMENDATION: Yes, Sky Acres Enterprises d/b/a Terrace Park Ventures should be granted Wastewater Certificate No. 505-S to serve the territory described in Attachment A. Sky Acres should be required to file a recorded warranty deed within 30 days of the issuance of an order in this docket. (BRADY, TOMLINSON, CROSBY)

STAFF ANALYSIS: On October 5, 1995, Sky Acres filed an application for an original wastewater certificate pursuant to Section 367.045, Florida Statutes, for a utility in existence and charging rates. Sky Acres has been operating the utility since its construction in June of 1982. The utility's facilities consist of one wastewater treatment plant and one wastewater collection system. Water service is provided directly to customers by Pasco County.

Except as stated in Issue 1, the application is in compliance with Section 367.045, Florida Statutes, and Rule 25-30.034, Florida Statutes. The application contains a check in the amount of \$750.00, which is the correct filing fee pursuant to Rule 25-30.020(2)(a), Florida Administrative Code. The application contains a description of territory to be served, a detailed system map and a territory map as prescribed by Rule 25-30.034(1)(h)(i) and (j), Florida Administrative Code. A description of the territory requested by the applicant is appended as Attachment A.

The application provides a warranty deed as evidence that the utility owns the land upon which the utility facilities are located as required by Rule 25-30.034(1)(e), Florida Administrative Code. However, to date, staff has not received a recorded copy of the deed. Staff recommends that the Commission require the utility to file a recorded deed within 30 days of the issuance of the order in this docket.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.070, Florida Administrative Code. No objections to the notice were received by the Commission and the time for filing a protest has expired. In correspondence and conversations with the homeowners association prior to the filing of the utility's application, staff was informed that the homeowners association did not want to assume responsibility for the system. Instead, the association was willing to pay the additional cost of Commission regulation and was willing to support any certification proceedings for Sky Acres. The association stated its primary interest is having Commission oversight of Sky Acres' rates and charges.

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As evidence of financial ability to provide utility service, the application contained the owners' balance sheet as of December 1994. As evidence of technical ability to provide wastewater service, the application states that the wastewater treatment system is being managed by Darrell Adams-Environmental Services which employs Mr. Jeffrey G. Weiner to service Sky Acres. Mr. Weiner has held DEP license number C0080000 since November, 1990. However, the utility's wastewater permit with Florida's Department of Environmental Protection (DEP) expired October 1, 1995.

On October 30, 1996, Sky Acres provided staff with proof of application to DEP for another permit. According to DEP's wastewater compliance division, Sky Acres will not be issued another permit until DEP's field observations of possible compliance violations have been resolved. DEP issued a warning letter on November 13, 1996, to which Sky Acres must respond by December 1, 1996. The primary violations cited in DEP's letter were operating a plant without a valid permit, exceeding effluent limits for coliform and nitrates, uncalibrated elapsed-time meters and nonfunctioning visual and audible alarms at the lift station, and improperly designed and maintained clarifier wier.

In consideration of the foregoing, staff believes it is in the public interest to grant Sky Acres' application for an original wastewater certificate. Staff recommends that Sky Acres Enterprises d/b/a Terrace Park Ventures be granted Wastewater Certificate No. 505-S to serve the territory described in Attachment A. Sky Acres should be required to file a recorded warranty deed within 30 days of the issuance of an order in this docket.

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ISSUE 3: What rates and charges should be approved for Sky Acres Enterprises d/b/a Terrace Park Ventures?

RECOMMENDATION: The existing rates and charges for Sky Acres Enterprises d/b/a Terrace Park Ventures should be approved. The effective date of the utility's rates and charges should be the stamped approval date of the tariff. (BRADY, TOMLINSON)

STAFF ANALYSIS: Sky Acres currently provides wastewater service to approximately 132 residential customers and 1 general service customer, the communal recreation area. Water service is provided by Pasco County. In addition to a \$3.59 fixed quarterly charge, Sky Acres sets wastewater usage rates at 75% of Pasco County's water usage rates. Pasco County reports customers' water usage charges quarterly to Sky Acres. Sky Acres then multiplies the dollar value of each customers' water charge by 75% to determine the customers' quarterly wastewater charge. Based on Pasco County's current water usage charges, Sky Acres' 75% wastewater usage charges are as follows:

Quarterly fixed charge:	\$3.59
Gallage charges:	
1,000 to 3,000 gallons	\$1.27 per thousand per month
4,000 to 6,000 gallons	\$1.36 per thousand per month
7,000 to 10,000 gallons	\$1.44 per thousand per month
11,000 to 15,000 gallons	\$1.58 per thousand per month
16,000 to 45,000 gallons	\$1.69 per thousand per month
over 46,000 gallons	\$1.88 per thousand per month

Originally Sky Acres anticipated another phase of development. However, according to the utility, those plans have now been canceled. Sky Acres' original permit with DEP was for 50,000 gallons per day (gpd). Sky Acres has requested that its new permit with DEP be issued for 27,000 gpd, instead, to avoid the need for more expensive treatment equipment. DEP has confirmed with staff that 27,000 gpd will be adequate to serve Sky Acres' existing customers but would not be adequate to serve any expansion. Since Terrace Park Estates is built out, the utility's proposed tariff does not contain a service availability charge. The utility does not charge customer deposits or miscellaneous connections fees.

It is staff's understanding that the utility intends to apply for a staff assisted rate case. Meanwhile, staff recommends that the utility's existing rates and charges be approved. The utility has filed a proposed wastewater tariff which reflects these rates and charges. The tariff sheets should be made effective on or after the stamped approval date.

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ISSUE 4: Should Sky Acres Enterprises d/b/a Terrace Park Estates be required to file an Annual Report with the Commission for both 1995 and 1996 and remit regulatory assessment fees for both 1995 and 1996?

RECOMMENDATION: Yes, Sky Acres Enterprises d/b/a Terrace Park Estates should be required to file an Annual Report with the Commission for both 1995 and 1996 and to remit regulatory assessment fees for both 1995 and 1996. The utility's 1995 Annual Report and regulatory assessment fee should be filed within 60 days of Commission vote. The utility's 1996 Annual Report and regulatory assessment fee should be filed by March 31, 1997. (BRADY, TOMLINSON)

STAFF ANALYSIS: 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. Sky Acres has been providing utility service and collecting revenues since June of 1982. In April of 1995 Sky Acres was notified by staff that it was a utility subject to Commission jurisdiction. At a minimum, staff believes it is appropriate to require the utility to file Annual Reports for both 1995 and 1996 and to remit regulatory assessment fees for both 1995 and 1996. Therefore, staff recommends that the utility be given 60 days in which to file the Annual Report and regulatory assessment fee for 1995. In addition, the utility should be required to file the Annual Report and regulatory assessment fee for 1996 by March 31, 1997.

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ISSUE 5: Should the docket be closed?

RECOMMENDATION: Yes. (CROSBY)

STAFF ANALYSIS: No further action is required and this docket should be closed.

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ATTACHMENT A

SKY ACRES ENTERPRISES d/b/a TERRACE PARK VENTURES

TERRITORY DESCRIPTION

The NE 1/4 of the NE 1/4 of Section 24 Township 26 South, Range 20 East, Pasco County, Florida, known as Terrace Park Estates.