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DIVISION OF WATER &
WASTEWATER
CHARLES HILL
DIRECTOR
(850) 413-6900

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Public Service Commission

July 31, 1997

Mr. Ray Hodge
Senator Charles Williams' Office
102 Dowling Avenue
Live Oak, FL 32060

Re: Doc. No. 961220-SU, RHV Utility, Inc.

Dear Mr. Hodge:

Thank you for contacting the Commission about RHV Utility, Inc. In the attached pages, we have attempted to respond to the PSC related questions brought up by Mr. Bader in his July 7, 1997, letter. Of course, in reference to Mr. Bader's FDEP questions, it is best to hear from that agency directly. However, whenever possible we have included the Commission staff's understanding of the FDEP position.

As you known, the Commission is involved with the utility in a staff assisted rate case. For your reference, a copy of Order No. PSC-97-0854-FOF-SU, issued on July 16, 1997, to Docket No. 961220-SU, is attached. Your name will also be added to the mailing list for that case. This will provide you with copies of future information on the case.

Again, thank you for you inquiry. If you have any additional questions concerning this situation, please contact me at (850) 413-6986.

Sincerely,

John D. Williams
John D. Williams
Bureau Chief

- ACK _____
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cc: Division of Records and Reporting
Division of Water and Wastewater (Hill, Mann, Rieger)
Division of Legal Services (Jaber)

DOCUMENT NUMBER-DATE

07006-AUG-15
Internet E-mail: CONTACT@PSC.STATE.FL.US
FPSC-RECORDS/REPORTING

Response to Mr. Baders questions concerning RHV Utility, Inc.:

Q. 1. Why was RHV allowed to operate in violation of FDEP standards for extended periods without enforcement actions being taken? Why does the FPSC reward this behavior by granting increased rates to the utility?

A. Although there have been extended periods of non compliance with FDEP, that agency has always been active in trying to get the utility to comply. Since there are no simple solutions, the utility has been given lengthy periods of time to obtain its operating permit. Since the utility has failed to achieve that goal, it appears that enforcement action is being taken. The latest word is that DEP is proceeding on with court action against the utility. We disagree with the statement that the PSC rewarded the utility with a rate increase. In fact, the Commission removed the allowance for director's fees because of the history of non compliance and neglect. The rate increase was necessary in order for the utility to have enough revenues to provide a readiness to serve all customers. This included costs related to necessary operation and maintenance expenses, as well as proforma improvement costs necessary to improve service.

Q. 2. How do the FDEP and the FPSC judge the financial viability of a utility such as RHV? What criteria are used and how are they applied? When a utility is found to have marginal or inadequate financial strength, what actions are taken to assure the viability of the utility and simultaneously protect the environment and the customers? Will the FDEP and the FPSC take actions which could force a utility into bankruptcy? If this is done and bankruptcy occurs, how will the utility services be provided?

A. As you know, the FPSC regulates the rates and charges of privately owned water and wastewater utilities such as RHV Utility, Inc. Pursuant to Section 367.081, Florida Statutes (FS), in setting rates, the Commission must consider the cost of providing the service as well as the value and quality of service. When a utility requests rate relief from the Commission, we review the company's books and records to determine the prudent expenses incurred by the utility on an ongoing basis, and the level of utility investment in plant and facilities needed to provide service to its customers. Rates are based on a revenue requirement which recovers all prudent operating and maintenance expenses, taxes and insurance, depreciation on its plant investment, as well as allow the opportunity to earn a return on its prudent investment in plant and facilities.

The financial strength of a utility is usually judged in terms of level of equity investment and ability to obtain necessary capital (through either added investment or loans) to make any needed improvements, upgrades or repairs to utility plant. The Commission is concerned when a utility does not show adequate financial strength. In these cases, if a rate request is before them, the Commission attempts to set rates which will assist the utility in improving its financial condition. However, the Commission is limited on how much it can do in this regard by the

ratemaking requirements of Section 367.081, FS. In addition, we have found that many utilities, particularly the small systems, do not file for rate relief as soon or as often as they should. Therefore, in many cases, the utility is already in a very difficult financial position by the time the request for rate relief is filed. In addition, by the time these small utilities file for rate relief, they are also having difficulty complying with the environmental requirements of DEP and other regulatory agencies. These circumstances can lead to large rate increases for the utility's customers. The Commission attempts to balance the interests of the utility and customers, recognizing that it is in the public interest that the utility be given adequate rate relief in order to maintain or achieve adequate and safe service to its customers. The Commission has never attempted to take any action which would force a utility into bankruptcy.

However, if bankruptcy occurs or if the utility abandons its facilities, the Commission works with the county to find a receiver to operate the plant to ensure that service continues to be provided to the customers. Section 367.165, FS, governs the steps a private utility regulated by the Commission must take before it can abandon its facilities. According to this statute, a utility must give 60 days notice to the county and the Commission.

Q. 3. With regard to the consent agreements between RHV and FDEP, why was progress not monitored frequently and enforcement action initiated when progress was not apparent?

A. Here again, we do not think that progress was not monitored by FDEP. However, it is unfortunate that compliance has not yet been achieved.

Q. 4. On an overall basis, why was RHV allowed to continue to violate FDEP regulations for 6 years or longer without any significant enforcement action?

A. Since, consent order agreements were signed, specific deadlines were given to achieve compliance. The utility was not out of compliance until those deadlines were missed. FDEP enforcement was always active during these times.

Q. 5. What does FDEP intend to do to assure prompt and continuous compliance by RHV in the future?

A. The FDEP is active with court action in this area.

Q. 6. What efforts have been made to coordinate FDEP actions regarding RHV with FPSC and Citrus County to assure that the welfare and interests of RHV's customers is given appropriate consideration in agency actions?

A. The PSC has been coordinating with FDEP in this area. We believe that the welfare and interests of the customers are being considered. The Commission held a customer meeting on April 9, 1997, with an agenda conference to review Staff's recommendations on June 24, 1997. Every effort has been made to inform the

customers of the PSC proceedings.

- Q. 7. How does FDEP deal with any potential conflicts between the interests of the public as a whole or as interest groups while protecting the environment from significant adverse impacts?
- A. The environmental impact has always been of high priority with FDEP. Through our dealings with them in this case, we have seen nothing to prove otherwise.
- Q. 8. How does FDEP justify allowing RHV to operate a submerged pressure sewer line carrying untreated waste across the Homosassa River when the line is exposed and subject to damage.
- A. The submerged line is of great concern to FDEP. Obtaining a plant operating permit is contingent on its repair.
- Q. 9. Because percolation ponds and other similar disposal methods have been ruled out due to the geology and hydrology of the area, what other options are available? How will FDEP handle the choice between these options? Will the feelings and interests of the customers of RHV be considered in any choice and implemented by the permitting process?
- A. Other disposal methods have not been ruled out. Possible options include interconnection with the County, spray irrigation, and reuse. It will be up to the utility to submit to FDEP a feasible plan. A choice of any of the above options will be expensive. Rate impact to the customers must be a consideration. The FDEP is aware of this.
- Q. 10. What is the current status of the RHV permit denial? What is the expected timing of future actions?
- A. As mention earlier, court action is being taken. The next court dates will be in Citrus County on August 8, 1997, and September 18 and 19, 1997.
- Q. 11. What is FDEP's position on the proforma items in the FPSC staff recommendation? What amount of compliance improvement will result from these items being accomplished?
- A. We believe that FDEP does support the improvements considered by the Commission. Although they fall short of the overall compliance needs of the utility, they are considered necessary to help insure reliable treatment.
- The Commission has allowed the following wastewater facility proforma improvements that total \$34,891: (1) Bar screen relocation; (2) Plant influent force main repair and relocation; (3) Air header system repair; (4) Hand railing repair; (5) Plant repiping; (6) Back-up blower; (7) New fencing; (8) Composite

sampler; (9) Flow meter relocation; (10) "No Trespassing" signs; (11) Facility Lighting; and (12) Plant leak repairs.

The Commission has allowed the following collection system proforma improvements that total \$138,392: (1) Inflow/infiltration study; (2) "As built" drawings; (3) Manhole repairs; and (4) Repairs and improvements to the liftstations.

- Q. 12. What is FDEP's position on the PSC statements concerning the utility not developing an acceptable compliance plan with DEP, and Citrus County as operator of the system, as the only possible solution to the effluent disposal system?
- A. The PSC cannot speak for the FDEP on this matter.
- Q. 13. How does the FDEP take into consideration the interests of the customers of an applicant for a permit or the holder of a permit who is in violation into decisions on granting the permit or enforcement actions? What public access to and notification of these proceedings is available?
- A. The PSC cannot speak for the FDEP on this matter.
- Q. 14. How does the designation of the Homosassa River and associated waterways as an "Outstanding Florida Waterway" Affect enforcement and performance standards for RHV? Does this designation have any impact on related issues?
- A. The "Outstanding Florida Waterway" is a FDEP designation. The PSC cannot speak for the FDEP on this matter.
- Q. 15. How does the FPSC rationalize their practice of charging the customers of a utility for the costs incurred by the FPSC staff in a staff assisted rate case when a significant portion of the costs result from the failure of the utility to perform the necessary work in the correct manner as a part of the utility's normal operations? This would seem to be a reward to the utility for it's failure to perform it's work in the manner required by the FPSC. It would seem that the utility should bear these costs.
- A. We are not sure as to what is being asked here. There was a regulatory commission expense of \$5,037, allowed in the rate case to cover the rate case filing fee and other legitimate rate case expenses. We deferred \$17,256, to future considerations. The costs include legal and accounting fees paid to consultants to the utility to defend itself and present its position before the PSC. Rate case filing fees associated with the staff assisted rate case. In this case, the initial filing fee of \$1,000, does not begin to cover the time and effort invested by PSC staff and Commissioners to process this case. Here again, these costs do not have anything to do with the utility's failure to perform it's compliance responsibilities.