



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

COMMISSION
CLERK

DEC 23 AM 10:38

DATE: DECEMBER 23, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (JOHNSON, ROMIG)
OFFICE OF THE GENERAL COUNSEL (BROWN)
JDJ

RE: DOCKET NO. 030971-SU - APPLICATION FOR TRANSFER OF
WASTEWATER FACILITY OF SKY ACRES ENTERPRISES D/B/A TERRACE
PARK VENTURES TO PASCO COUNTY UTILITIES, AND FOR
CANCELLATION OF CERTIFICATE NO. 505-S IN PASCO COUNTY.
COUNTY: PASCO

AGENDA: 01/06/04 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\030971.RCM

CASE BACKGROUND

Sky Acres Enterprises d/b/a Terrace Park Ventures (Terrace Park or utility) is a Class C wastewater utility providing service to 172 residential customers and one general service customer in the mobile home park known as Terrace Park Estates. The system is located in the water resource caution area of the Southwest Florida Water Management District. Water service is provided by Pasco County. Terrace Park was granted Certificate No. 505-S pursuant to Order No. PSC-97-0011-FOF-SU, issued January 2, 1997, in Docket No. 951190-SU, In Re: Application of Sky Acres Enterprises d/b/a Terrace Park Ventures for a Certificate to Provide Wastewater Service in Pasco County.

The utility's 2002 annual report lists operating revenue of \$34,011 and a net operating loss of \$10,474. The utility was late

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in paying its 2002 Regulatory Assessment Fees (RAFs). According to Rule 25-30.120, Florida Administrative Code, the fees were due by March 31, 2003. The Commission received the fees, plus two months penalties and interest, on June 5, 2003. The utility asserts that its last wastewater billings were mailed in December 2002. According to staff's calculations, Terrace Park still owes a penalty and interest payment of \$91.49.

Pasco County (County) and Terrace Park signed a Purchase and Sales agreement in December, 2002. On January 24, 2003, the County closed on the purchase of Terrace Park for \$10,000. Therefore, January 24, 2003, is the effective date of the acquisition. On May 31, 2003, Terrace Park notified the Commission that it had sold the Terrace Park wastewater system to the County. On October 7, 2003, an application was filed for the transfer of the utility's wastewater facilities to Pasco County and for the cancellation of Certificate No. 505-S.

This recommendation addresses the transfer of Terrace Park to Pasco County and whether show cause proceedings should be initiated against the utility for the untimely filing of regulatory assessment fees (RAFs). The Commission has jurisdiction pursuant to Sections 367.045, and 367.071(4)(a), Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Terrace Park be ordered to show cause within 21 days why it should not remit a statutory penalty in the amount of \$76.53 and interest in the amount of \$15.47, for violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, for failure to timely pay regulatory assessment fees for 2002?

RECOMMENDATION: No. A show cause proceeding should not be initiated under these circumstances. The Commission should refer the utility's unpaid penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible. (BROWN, ROMIG)

STAFF ANALYSIS: 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" Terrace Park was responsible for RAFs for the year 2002.

As explained in the case background, Terrace Park did pay regulatory assessment fees (RAFs) for the year 2002, but it did not pay them in a timely fashion. 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. The penalty plus interest is assessed in the following manner:

- 1) Five percent of the fee if the failure is for not more than 30 days, with an additional five 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 one percent for each 30 days or fraction thereof, not to exceed a total of 12 percent per annum.

Terrace Park paid penalties and interest for two months, but did not include penalties and interest for the month of June, 2003. The letter informing the Commission of the sale of the utility, which accompanied the RAF payment, was dated May 31, 2003, but not received by the Commission until June 5th. Staff has been unable to contact the utility about the remaining penalty and interest, because the utility has been sold to the County.

Utilities are charged with the knowledge of the Commission's rules and statutes, and "[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 on time, plus applicable penalties and interest, would meet the standard for a "willful violation" of the RAF statute and rule. 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

In this case, however, the utility has paid its RAFs and two months of penalties and interest for late filing, and the amount of the penalty and interest for failure to pay on time is so small that a show cause proceeding and further Commission efforts to collect the amount would not be cost effective. Therefore, staff believes that show cause proceedings should not be initiated. Further attempts to collect would be futile, because the utility has been disbanded and is no longer regulated by the Commission.

For these reasons, staff recommends that show cause proceedings not be initiated against Terrace Park for its apparent violation of the aforementioned statutes and Commission rules. Staff recommends that the Commission refer the utility's unpaid penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible.

ISSUE 2: Should the transfer of the wastewater facilities of Sky Acres Enterprises d/b/a Terrace Park Ventures to Pasco County be approved?

RECOMMENDATION: Yes. The transfer to Pasco County should be approved as a matter of right, effective January 24, 2003. If the Commission approves staff's recommendation in Issue 1, Certificate No. 505-S should be cancelled. (JOHNSON)

STAFF ANALYSIS: On October 7, 2003, Pasco County filed an application on behalf of Terrace Park for the transfer of the wastewater facilities and cancellation of Certificate No. 505-S pursuant to Section 367.071(4), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. The County is exempt from the Commission's regulation pursuant to Section 367.022 (2), Florida Statutes, because it is a governmental authority.

Pasco County filed its application pursuant to Section 367.071(4)(a), Florida Statutes, which provides that the sale of facilities, in whole or in part, to a governmental authority shall be approved as a matter of right. As such, no notice of the transfer is required and no filing fees apply. The application is in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code.

Pursuant to Rule 25-30.037(4)(g), Florida Administrative Code, the application indicates that there are no customer deposits to refund. Terrace Park has provided the County with a listing of current customers along with the customers' addresses and telephone numbers. Furthermore, the County has obtained Terrace Park's most recently available income and expense statement, balance sheet, income statement for rate base for regulatory purposes, and contributions-in-aid-of-construction pursuant to Rule 25-30.037(4)(e), Florida Administrative Code.

Pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, the utility has filed its 2002 annual report and paid its 2002 RAFs. However, as mentioned in Issue 1, Terrace Park has no outstanding RAFs, but does owe outstanding penalties and interest for the untimely filing of RAFs. The utility has no open dockets pending before the Commission.

Staff recommends that the application is in compliance with the provisions of Rule 25-30.037, Florida Administrative Code.

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Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities to a governmental authority shall be approved as a matter of right. Therefore, staff recommends that the transfer to Pasco County should be approved as a matter of right, effective January 24, 2003. If the Commission approves staff's recommendation in Issue 1, Certificate No. 505-S should be cancelled.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed. However, if a show cause proceeding is initiated, this docket should remain open pending the outcome. (BROWN)

STAFF ANALYSIS: This docket concerns a transfer of facilities to a governmental agency which must be approved as a matter of right. If the Commission approves staff's recommendation in Issue 1, this docket should be closed. However, if a show cause proceeding is initiated, this docket should remain open pending the outcome.