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

DATE: January 10, 2007

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Kaproth) *KK CROSS*
Office of the General Counsel (Gervasi) *POST*

TS *W*

RE: Docket No. 060753-SU – Request for waiver of 2005 annual report penalty for Highlands Utilities Corporation
County: Highlands

AGENDA: 01/23/07 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060753.RCM.DOC

Case Background

Highlands Utilities Corporation (Highlands or utility) is a Class B wastewater utility located in Highlands County. The utility provides service to 1,504 wastewater customers. Based on the utility's 2005 annual report, Highlands reported gross annual wastewater revenues of \$638,388; operating expenses of \$700,844; and net operating income of a negative \$62,456.

Pursuant to Rule 25-30.110(3)(a), Florida Administrative Code (F.A.C.), the utility's 2005 annual report was due on March 31, 2006. On March 27, 2006, the utility requested a thirty-day extension to May 1, 2006, to file its 2005 annual report. On March 29, 2006, pursuant to Rule 25-30.110(3)(c), F.A.C., this request was automatically granted. On May 17, 2006, the

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Division of Economic Regulation sent a delinquent 2005 annual report letter because the utility had not yet filed its annual report. This letter stated that the penalty for a Class C utility is \$3 per day for each calendar day elapsed from the due date of the filing.

By letter dated June 5, 2006, Highlands requested a second extension to file its 2005 annual report to June 30, 2006. By letter dated June 6, 2006, the request for extension of time was granted for good cause shown pursuant to Rule 25-30.110(3), F.A.C. The utility's attorney explained that the utility's long-time accountant had a brain tumor and he did not realize the annual report was not filed until he received staff's May 17, 2006 letter. On June 12, 2006, the utility paid a penalty of \$108 (36 days late x \$3, for the period of May 1, 2006 through June 5, 2006), but still had not filed its annual report. However, since Highlands is a Class B utility, it should be assessed a penalty of \$13.50 per day pursuant to Rule 25-30.110(7)(b), F.A.C., rather than the \$3 per day penalty assessed for Class C utilities.

The utility failed to file its annual report by the June 30, 2006, extended deadline. Therefore, on July 18, 2006, the Division of Economic Regulation sent a second delinquent annual report penalty letter. In a letter dated July 24, 2006, the utility's accountant requested a July 24, 2006 due date in lieu of the June 30, 2006 due date. The annual report was filed actually on July 24, 2006. That extension was not granted.

On July 26, 2006, the Division of Economic Regulation sent a third delinquent annual report penalty letter. Since the annual report was filed on July 24, 2006, it was late a total of 24 days from the June 30, 2006, extended deadline, plus the initial 36 days late before the second extension request, for an outstanding penalty amount of \$810 (\$13.50 x 60 days).¹ The amount owed is \$702, which is the total amount owed minus the initial payment of \$108. In a letter dated September 29, 2006, the utility's attorney requested that the outstanding penalty be waived for good cause shown, pursuant to Rule 25.30-110(3)(c), F.A.C.

This recommendation addresses Highland's request for waiver of its 2005 annual report penalty. The Commission has jurisdiction pursuant to section 350.117, Florida Statutes, and Rule 25-30.110, F.A.C.

¹ The July 26, 2006, letter incorrectly states that the annual report was initially 35 days late rather than 36 days late.

Discussion of Issues

Issue 1: Should the Commission grant Highlands Utilities Corporation's request for waiver of the remainder of its 2005 annual report penalties?

Recommendation: Yes. The Commission should waive the remainder of Highlands Utilities Corporation's 2005 annual report penalties. (Kaproth, Gervasi)

Staff Analysis: Rule 25-30.110(3), F.A.C., requires utilities subject to the Commission's jurisdiction as of December 31st of any year to file an annual report for that year. The report is due by March 31st for the preceding year ending December 31st, but was extended to June 30, 2006 in this docket. As stated in the Case Background, Highlands was granted two extensions of time in which to file its 2005 annual report by June 30, 2006, but still filed the report 24 days late, plus the initial 36 days late before the second extension request, for a total penalty amount of \$810 (\$13.50 x 60 days). The outstanding amount owed is \$702, which is the total penalty amount minus the initial payment of \$108. The utility requests that the remaining penalty be waived, stating that there is good cause for the noncompliance and that the requested waiver relates solely to the penalties associated with the 2005 annual report.

In its September 29, 2006, letter, the utility states the basis for the first two extensions was the illness of the accountant beginning April 15, 2006. The utility described in a time line the diagnosis of a brain tumor, surgery, chemotherapy and radiation treatments, and stated that the treatment was more debilitating than anticipated.

Staff has verified that the utility has filed its annual reports on a timely basis in the past, except for the 1991 annual report when a \$162 penalty was paid. All the regulatory assessment fees, penalties and interest have been paid through July 31, 2006.

Rule 30.110(6)(c), F.A.C., states that a utility shall be subject to the penalties imposed by the rule unless it demonstrates good cause for the noncompliance. The rule further provides that the Commission may, in its discretion, impose penalties for noncompliance that are greater or lesser than provided by the rule. Staff believes that Highlands has shown good cause as to why the 2005 annual report was not timely filed. Therefore, staff recommends that the Commission not impose the standard penalty balance, and grant the utility's request for waiver of the remainder of its 2005 annual report penalties in the amount of \$702.

Issue 2: Should this docket be closed?

Recommendation: Yes, if no protest to a proposed agency action issue is filed by a person whose interests are substantially affected within 21 days of the Order arising from this recommendation, the docket should be closed upon the issuance of a Consummating Order. If a timely protest to a proposed agency action issue is filed by a person whose substantial interests are affected within 21 days of the Commission Order, the docket should remain open pending the resolution of the protest. (Gervasi)

Staff Analysis: If no protest to a proposed agency action issue is filed by a person whose interests are substantially affected within 21 days of the Order arising from this recommendation, the docket should be closed upon the issuance of a Consummating Order. If a timely protest to a proposed agency action issue is filed by a person whose substantial interests are affected within 21 days of the Commission Order, the docket should remain open pending the resolution of the protest.