

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of Sky Acres) DOCKET NO. 951190-SU
Enterprises d/b/a Terrace Park) ORDER NO. PSC-97-0011-FOF-SU
Ventures for a Certificate to) ISSUED: January 2, 1997
Provide Wastewater Service in)
Pasco County.)

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 GRANTING CERTIFICATE, SETTING RATES AND CHARGES,
REQUIRING SKY ACRES ENTERPRISES D/B/A TERRACE PARK
VENTURES TO FILE 1995 AND 1996 ANNUAL REPORTS AND PAY
REGULATORY ASSESSMENT FEES FOR 1995 AND 1996,
AND CLOSING DOCKET

BY THE COMMISSION:

Background

On October 5, 1995, Sky Acres Enterprises d/b/a Terrace Park Ventures (Sky Acres or utility) filed an application with this Commission for a certificate to provide wastewater service in Pasco County, pursuant to Section 367.045, Florida Statutes. Sky Acres, which has been in existence since 1982, is a Class C utility providing service to 132 residential customers and 1 general service customer in the mobile home park known as Terrace Park Estates. Sky Acres' facilities consist of one wastewater treatment plant and one wastewater collection system. Water service is provided by Pasco County.

Sky Acres obtained the land to build the mobile home park and wastewater system in 1981. At that time, the name of the company was Amanda Company and the park was known as Terrace Grove. The name of the utility was later changed to Sky Acres and the park was renamed Terrace Park Estates.

Sky Acres has operated without a certificate since 1982. The utility believed, because of its small size and because it operated

DOCUMENT NUMBER-DATE

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as a nonprofit entity, that it was only subject to the jurisdiction of the Department of Environmental Protection (DEP).

We became aware of the utility's existence when it attempted to double its rates without notice early in 1995. According to Sky Acres, it had been cited with several violations and was attempting to comply with upgrades required by DEP by increasing its rates. Sky Acres indicated that it wanted the homeowners association to assume ownership and operation of the utility, but the association did not agree.

By letter dated April 22, 1995, Sky Acres was informed by the Commission staff that it appeared the utility did not qualify for exemption and would, therefore, have to complete an application for a certificate. As stated previously, the application was filed on October 5, 1995. However, the application was not completed until October 30, 1996. Because Sky Acres has been providing service since 1982 without a certificate or order finding it exempt from Commission regulation, it is in apparent violation of Section 367.031, Florida Statutes.

Show Cause

As stated previously, 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.

Although Sky Acres failed to obtain a certificate prior to providing service, we do not find that the violation of Section 367.031, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Therefore, show cause proceedings will not be initiated against Sky Acres for failing to obtain a certificate prior to providing wastewater service.

Application

Except as discussed previously, the application is in compliance with Section 367.045, Florida Statutes, and Rule 25-30.034, Florida Statutes. In particular, the application contains a filing fee in the amount of \$750.00, pursuant to Rule 25-30.020(2)(a), Florida Administrative Code. Sky Acres also provided a copy of a recorded warranty deed as evidence that it owns the land upon which its facilities are located, as required by Rule 25-30.034(1)(e), Florida Administrative Code.

Sky Acres provided a description of the 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. The territory Sky Acres has requested to serve is described in Attachment A of this order, which by reference is incorporated herein.

Sky Acres provided proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code. No objections to the application have been received and the time for filing such has expired.

According to information provided in the application, it appears that Sky Acres has the financial ability to provide service to the customers in the requested territory. Also, according to the information provided, the utility has the technical ability to provide wastewater service. Sky Acres has retained Darrell Adams-Environmental Services to manage the wastewater treatment system. Mr. Jeffrey G. Weiner, who is employed by Darrell Adams-Environmental Services to service Sky Acres, has held DEP license number C0080000 since November, 1990.

It should be noted that the utility's DEP permit expired October 1, 1995. On October 30, 1996, Sky Acres provided proof that it has applied to DEP for another permit. According to DEP,

Sky Acres will not be issued another permit until the alleged compliance violations have been resolved. DEP issued a warning letter on November 13, 1996, to which Sky Acres was to have responded by December 1, 1996. Sky Acres' response to DEP's warning letter was received by DEP on December 6, 1996. Although Sky Acres has made some corrections, the response to the warning letter was inadequate.

The primary violations cited in DEP's letter are operating a plant without a valid permit, exceeding effluent limits for coliform and nitrates, uncalibrated elapsed-time meters, nonfunctioning visual and audible alarms at the lift station, and improperly designed and maintained clarifier wier. We are concerned about these violations, the lack of a current DEP permit, and Sky Acres' apparent failure to adequately respond to DEP's warning letter. We do not, however, find it appropriate to address these concerns in this docket. We will continue to monitor this situation and if the violations continue, another docket will be opened to address any problems.

In view of the foregoing, we find that it is in the public interest to grant Sky Acres Certificate No. 505-S to provide wastewater service in the territory described in Attachment A of this Order.

Rates and Charges

As stated previously, Sky Acres currently provides wastewater service to approximately 132 residential customers and 1 general service customer. Water service is provided by Pasco County. Sky Acres charges its customers a fixed quarterly charge of \$3.59 for wastewater service. In addition, wastewater usage rates are set at 75 percent of Pasco County's water usage rates. The water usage charges are reported quarterly to Sky Acres by Pasco County. Sky Acres then multiplies each customers' water usage charge by 75 percent to determine the customers' quarterly wastewater charge. Based on Pasco County's current water usage charges, Sky Acres' 75 percent wastewater usage charges are as follows:

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

Although Sky Acres originally anticipated another phase of development, those plans have been canceled. Sky Acres' original permit with DEP was for 50,000 gallons per day (gpd). Sky Acres has requested that its new permit be issued for 27,000 gpd instead to avoid the need for more expensive treatment equipment. DEP has confirmed 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.

Therefore, we find that Sky Acres' existing rates, as set forth herein, are reasonable and they are approved. The utility has filed a tariff which reflects these rates and charges. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

Regulatory Assessment Fees and Annual Reports

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 or not 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 that it was a utility subject to Commission jurisdiction.

Therefore, we find it appropriate to require Sky Acres to file annual reports for 1995 and 1996 and to pay regulatory assessment fees for both 1995 and 1996. Sky Acres shall file a 1995 annual report and pay regulatory assessment fees for 1995 within 60 days of the date of this Order. In addition, Sky Acres shall file a 1996 annual report and regulatory assessment fees for 1996 by March 31, 1997.

It is, therefore,

ORDERED by the Florida Public Service Commission that Sky Acres Enterprises d/b/a Terrace Park Ventures, 700 Grand Avenue, Wausau, Wisconsin 54402, is hereby granted Certificate No. 505-S to serve the territory described in Attachment A of this Order. It is further

ORDERED that Sky Acres Enterprises d/b/a Terrace Park Ventures shall charge its customers the rates and charges approved in the body of this order until authorized to change by this Commission in a subsequent proceeding. It is further

ORDER NO. PSC-97-0011-FOF-SU
DOCKET NO. 951190-SU
PAGE 6

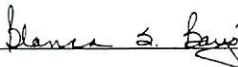
ORDERED that the tariff filed reflecting the rates and charges approved herein shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that Sky Acres Enterprises d/b/a Terrace Park Ventures shall file a 1995 annual report and pay regulatory assessment fees for 1995 within 60 days of the date of this Order. It is further

ORDERED that Sky Acres Enterprises d/b/a Terrace Park Ventures shall file a 1996 annual report and pay regulatory assessment fees for 1996 by March 31, 1997. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 2nd day of January, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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ORDER NO. PSC-97-0011-FOF-SU
DOCKET NO. 951190-SU
PAGE 7

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.

ORDER NO. PSC-97-0011-FOF-SU
DOCKET NO. 951190-SU
PAGE 8

ATTACHMENT A

SKY ACRES ENTERPRISES d/b/a TERRACE PARK VENTURES

Territory Description

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