

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-  
assisted rate case in Citrus  
County by RHV Utility, Inc.

DOCKET NO. 961220-SU  
ORDER NO. PSC-97-1477-PCO-SU  
ISSUED: November 24, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
DIANE K. KIESLING  
JOE GARCIA

ORDER DENYING REQUEST FOR EXTENSION OF TIME TO FILE RESPONSE  
AND  
ORDER SUSPENDING FINE

BY THE COMMISSION:

Background

RHV Utility, Inc. (RHV or utility) is a Class C wastewater utility located near the City of Homosassa in Citrus County. The utility provides wastewater service to approximately 402 residential customers and 4 general service customers (Riverside Villas/Yardarm Restaurant, a 32 unit condominium complex known as Sportsman's Lodge, K.C. Crumps restaurant, and a recreation club house). The Homosassa Association, a non-jurisdictional utility, provides water service to the utility's service area.

The Commission first regulated the utility when it was owned by Marathon Realities, Inc. (Marathon), from October 1975 through February 1985, at which time it was sold to Citrus County. In June 1986, Marathon repurchased the utility from Citrus County, and the Commission granted Marathon Certificate No. 429-S. By Order No. 20518, issued December 23, 1988, in Docket No. 880485-SU, the Commission authorized the transfer of Certificate No. 429-S from Marathon to Homosassa Utilities, Inc. By Order No. PSC-94-1163-FOF-SU, issued September 22, 1994, in Docket No. 930763-SU, the Commission approved the transfer of Certificate No. 429-S from Homosassa Utilities, Inc. to RHV, the current owner. RHV serves

DOCUMENT NUMBER-DATE

12037 NOV 24 5

PSC-REG-REP-REPORTING

the Riverhaven subdivision, and the utility is owned by a group of shareholders who are property owners within the Riverhaven development.

The utility was granted a general rate increase by Order No. 24937, issued August 20, 1991, in Docket No. 900967-SU. In this rate case, the Commission approved a 26% increase in the rates that had been in effect while under the jurisdiction of Citrus County. The Commission also approved \$161,855 in pro forma additions. The purpose of these additions was to meet the Department of Environmental Protection's (DEP) mandated repairs and to attempt to have the growth moratorium on the service territory lifted. To date, the DEP has not given the utility an operating permit, and the growth moratorium is still in effect.

On June 20, 1994, RHV applied for another staff-assisted rate proceeding. At this time, the utility stated that the major reason for applying for a rate increase was to recover some of the cost of plant improvements required by the DEP. A general rate increase was granted by Order No. PSC-95-0961-FOF-SU, issued August 7, 1995, in Docket No. 940655-SU. The increase did not include any provision for necessary improvements, as the utility failed to provide sufficient supporting evidence for planned additions of plant in service. In this rate case, the Commission approved an increase in rates of approximately 6%. Considering the fact that the utility has never filed for an index or pass-through increase, the result of this rate case was to merely true rates for inflationary increases in cost. The problems of necessary plant improvements were not addressed. As with the previous rate case, the utility did not have a valid operating permit, and there was a growth moratorium in the service territory.

Citing the same reasons as those used in prior rate cases, that of recouping the costs of plant improvements required by the DEP, the utility filed its most recent rate case on October 10, 1996. By Order No. PSC-97-0854-FOF-SU, issued July 16, 1997, in Docket No. 961220-SU, the Commission granted the utility an increase in its rates. Presently, the DEP is still pursuing legal action against the utility for noncompliance with regulatory directives and for the improper disposal of effluent.

ORDER NO. PSC-97-1477-PCO-SU  
DOCKET NO. 961220-SU  
PAGE 3

By Order No. PSC-97-0854-FOF-SU, the Commission also ordered the utility to show cause within 20 days of the Order why it should not be fined \$5,000 for failing to comply with Section 367.111(2), Florida Statutes, by not providing satisfactory service which meets the standards promulgated by the DEP.

Request for Extension of Time to File Response

On August 14, 1997, RHV filed a request for an extension of time to file its response to the show cause order stating that the utility's preparation for a hearing involving the DEP had consumed all of its energy, leaving no time to prepare a sufficient response to Order No. PSC-97-0854-FOF-SU. Pursuant to that Order, a response was due on or before August 5, 1997.

Order No. PSC-97-0854-FOF-SU specifically provides that the utility was to file its response within 20 days of the Order. Furthermore, the Order expressly provides that failure to file a timely written response shall constitute an admission of the facts alleged therein and a waiver of a right to a hearing. Finally, the Order provides that if the utility fails to timely respond, the fine shall be imposed without further action of the Commission.

To date the utility has failed to file the appropriate response as set forth in Order No. PSC-97-0854-FOF-SU. Further, the utility's request for an extension of time to file its response was not filed within 20 days of the Order. Therefore, we find it appropriate to deny the utility's request as untimely and inappropriate. Pursuant to Order No. PSC-97-0854-FOF-SU, the fine shall be imposed without further action of the Commission.

Suspension of Fine

During the pendency of this proceeding, our staff has been in contact with the DEP regarding the status of the legal proceedings initiated by the DEP against RHV and the progress being made therein to bring the utility back into compliance. On September 5, 1997, the Fifth Circuit Court issued an order providing for the utility's lift stations to be brought into compliance with all pertinent DEP rules within six months of the date of the order. Additionally, the Court ordered the utility to lower the level of the wastewater treated effluent in its percolation ponds and

ORDER NO. PSC-97-1477-PCO-SU  
DOCKET NO. 961220-SU  
PAGE 4

maintain the reduced level. The Court also ordered the utility to complete an infiltration and inflow study of the utility's entire collection system within two months of the order and to implement any repairs needed as identified in the study within two months of the study. Finally, the Court ordered the parties to commence mediation on the outstanding issues in the case within forty-five days from the date of the order.

Based on the foregoing, we find it appropriate to allow the utility additional time to satisfy the Court's mandates. Given the Court's directives, the utility now must take affirmative steps to bring itself back into compliance with the DEP's standards. Therefore, we find it appropriate to suspend the \$5,000 fine for six months pending resolution of the current civil proceedings initiated by the DEP. Upon expiration of the six-month suspension, we will reconsider this matter based on the developments which have occurred during that six-month period.

Closing of Docket

This docket shall remain open for verification of the utility's compliance with the DEP's standards. Furthermore, this docket shall remain open pending completion by the utility of the construction of the pro forma improvements approved in Order No. PSC-97-0854-FOF-SU.

It is therefore,

ORDERED by the Florida Public Service Commission that RHV Utility, Inc.'s request for an extension of time to file a response to Order No. PSC-97-0854-FOF-SU is hereby denied. It is further

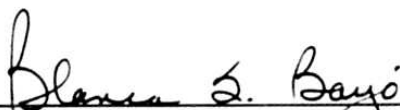
ORDERED that the \$5,000 fine set forth in Order No. PSC-97-0854-FOF-SU is hereby imposed without further action by this Commission. It is further

ORDERED that the \$5,000 fine is hereby suspended for six months pending resolution of the current civil proceedings initiated by the Department of Environmental Protection. It is further

ORDER NO. PSC-97-1477-PCO-SU  
DOCKET NO. 961220-SU  
PAGE 5

ORDERED that this docket shall remain open for verification of the utility's compliance with the Department of Environmental Protection's standards and shall remain open pending completion by the utility of the construction of the pro forma improvements approved in Order No. PSC-97-0854-FOF-SU.

By ORDER of the Florida Public Service Commission this 24th day of November, 1997.

  
\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

BLR

ORDER NO. PSC-97-1477-PCO-SU  
DOCKET NO. 961220-SU  
PAGE 6

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.