

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of abandonment of  
wastewater system in Citrus  
County by RHV Utility, Inc.

DOCKET NO. 971635-SU  
ORDER NO. PSC-98-0474-FOF-SU  
ISSUED: April 1, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

ORDER ACKNOWLEDGING ABANDONMENT AND APPOINTMENT OF RECEIVER  
AND  
ORDER APPROVING PAYMENT PLAN  
FOR REGULATORY ASSESSMENT FEE PENALTIES AND INTEREST

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 in Riverhaven Village and 4 general service customers. The Homosassa Special Water District provides water service to the utility's service area. RHV's 1996 annual report lists total gross revenues of \$116,927 with a net operating loss of \$50,003.

On November 24, 1997, the Circuit Court of the Fifth Judicial Circuit of the State of Florida, in and for Citrus County (Circuit Court or Court) issued an order in Case No. 97-1872-CA which effectively declared the utility abandoned by the appointment of Citrus County (County) as receiver of the utility's assets. Case No. 97-1872-CA was an enforcement action brought by the Florida Department of Environmental Protection against RHV for long-term failure to bring its wastewater system into environmental compliance. The Circuit Court appointed the County receiver after having been advised by RHV that it had found no immediate buyer for

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REGISTRATION

the utility and that it otherwise had no financial means to respond to the previous orders of the Circuit Court with respect to the enforcement action.

ACKNOWLEDGMENT OF ABANDONMENT AND APPOINTMENT OF RECEIVER

In the order appointing the County receiver, the Circuit Court made the distinction that the County was receiver only as to the assets of the utility, not receiver of RHV Utilities, Inc. The appointment was effective immediately and will remain in effect until such time as the receiver disposes of the plant and files a final report or until otherwise discharged by the Circuit Court. The plant was defined as the wastewater treatment plant and wastewater collection system owned by RHV, including all pipes, lift stations, lines, and other appurtenances.

The receiver was given all normal powers and authorities necessary to effectively and efficiently provide wastewater service, including applying for an increase in rates or special assessments against the customers of the utility. Meanwhile, the owners of RHV were directed to forward to the receiver all funds currently held in accounts of the utility for the receiver's use in accordance with the terms of the order.

Because there is an open docket with issues relating to the accounts of the utility, our staff met with officials of Citrus County in Inverness, Florida, on December 18, 1997. In the meeting, the County was advised of the issues remaining pursuant to the utility's staff-assisted rate case in Docket No. 961220-SU. In addition, our staff offered the County any assistance it may require with the transfer to Citrus County. Also attending the meeting were representatives of the utility, the Florida Department of Environment Protection, and the utility's customers.

Based on discussions at this meeting, the County decided it was in the best interests of the ratepayers of Riverhaven Village and RHV's remaining service area for the County to operate the utility as an exempt entity pursuant to Section 367.022(2), Florida Statutes, and by letter dated December 19, 1997, the County served official notice of its intention to do so.

Based on the foregoing, we find it appropriate to acknowledge both the abandonment of RHV Utility, Inc. and the appointment of Citrus County as receiver of the utility assets effective November 24, 1997. Because there is an open docket with issues relating to

the accounts of the utility, Certificate No. 429-S shall remain in effect until all issues relating to this docket and Docket No. 961220-SU are resolved.

#### REGULATORY ASSESSMENT FEES

The utility's regulatory assessment fees are current through 1996; however, there are outstanding penalties and interest in the amount of \$1,192.40 which are associated with the untimely remittance of the utility's 1993 and 1996 regulatory assessment fees. The disposition of this amount will be dealt with subsequently in this Order. Because the utility is exempt from regulation while being operated by the County, RHV is responsible only for 1997 regulatory assessment fees up to the effective date of the abandonment on November 24, 1997. Accordingly, we find that RHV shall be responsible for estimating and paying regulatory assessment fees up through November 24, 1997.

#### PAYMENT PLAN FOR PENALTIES AND INTEREST

In establishing rates, the utility's obligation to pay regulatory assessment fees is included in the determination of the revenue requirements. Rule 25-30.120(2)(a), Florida Administrative Code, provides, "[r]egulatory assessment fees shall be filed with the Commission on or before March 31 for the preceding year ended December 31." However, RHV failed to timely pay regulatory assessment fees for 1993 and 1996.

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(5)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its regulatory assessment fees, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 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 1% for each 30 days or fraction thereof, not to exceed a total of 12% annum.

In addition, pursuant to Sections 367.145(1)(b) and 367.161, Florida Statutes, and Rule 25-30.120(5)(b), Florida Administrative Code, the Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner.

We have calculated the penalties and interest on the number of days elapsed since the respective regulatory assessment fees were due and the date they were actually remitted. Presently, the utility owes the following: \$789.26 in penalties and \$157.85 in interest for a total of \$947.11 for 1996 and \$204.41 in penalties and \$40.88 in interest for a total of \$245.29 for 1993. The combined total for both penalties and interest for 1993 and 1996 is \$1,192.40.

On February 12, 1998, the Commission received a letter from Citrus County as receiver requesting a waiver of these penalties and interest or, in the alternative, an installment plan for the fees. The receiver states that the utility's liabilities far exceed its assets and for all practical purposes is bankrupt at this time. In addition, we are aware of the long-standing environmental compliance problems which have plagued this utility and precipitated the appointment of the receiver.

Pursuant to Section 350.113, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, the Commission is required to collect interest, penalties, and collection costs from a regulated utility that is delinquent in the payment of its regulatory assessment fees. Florida statutes do not provide the Commission with the discretion to waive the statutory penalties and interest associated with the delinquent regulatory assessment fees. Accordingly, the County's request for a waiver of the penalties and interest associated with the delinquent regulatory assessment fees must be denied.

While we have construed these provisions to bar waiver of regulatory assessment fees, penalties, and interest, we have not construed them to preclude a reasonable payment schedule to redress a utility's delinquency. See Orders Nos. 24290, 24884, PSC-94-1464-FOF-WU, PSC-94-1463-FOF-WS, PSC-95-1514-FOF-WS, PSC-96-0282-FOF-WU, and PSC-96-0580-FOF-WS.

Based on the extreme financial and environmental condition of this utility, we find it appropriate to grant the request of the utility, with Citrus County as receiver, to pay the penalties and

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interest over time. Accordingly, the receiver shall repay the total penalties and interest of \$1,192.40 over a six-month period, with a minimum monthly payment of \$198.73. The first payment shall be due by April 15, 1998, and subsequent payments shall be made by the 15th of each month. At that rate, the penalties and interest shall be paid in full by September 15, 1998. Approval of a payment plan is subject to the final approval of the State of Florida Comptroller's Office, Department of Banking and Finance.

Because outstanding penalties associated with the utility's late-filing of its 1994 and 1995 annual reports remain, this docket shall remain open to address this issue after receipt of additional information from the utility.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the abandonment of RHV Utility, Inc. and the appointment on November 24, 1997 of Citrus County as receiver for RHV Utility, Inc. are herein acknowledged. It is further

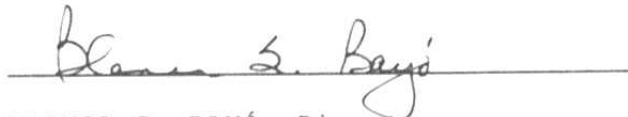
ORDERED that RHV Utility, Inc., with Citrus County as receiver, 111 West Main Street, Third Floor, Inverness, Florida 34450 shall remain responsible for payment of regulatory assessment fees due up to November 24, 1997. It is further

ORDERED that the payment plan for penalties and interest associated with the untimely remittance of RHV Utility, Inc.'s 1993 and 1996 regulatory assessment fees, as set forth above, is hereby approved subject to the final approval of the Department of Banking and Finance. It is further

ORDERED that this docket shall remain open.

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By ORDER of the Florida Public Service Commission this  
1st day of April, 1998.

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a solid horizontal line.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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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 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.