

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-98-0877-FOF-SU  
ISSUED: July 2, 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.

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING WAIVER OF RULE 25-30.110(7),  
FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

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, 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. By letter dated December 19, 1997, the County served notice of its intention to operate the

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REGISTRY REPORTING

system as an exempt entity pursuant to Section 367.022(2), Florida Statutes. The Commission acknowledged the abandonment of the utility and the appointment of Citrus County as receiver by Order No. PSC-98-0474-FOF-SU, issued April 1, 1998. Pursuant to Section 367.022(2), Florida Statutes, the utility is exempt from Commission regulation while it is being operated by the county.

On March 21, 1997, the utility filed its 1994 and 1995 annual reports. These reports were due on March 31, 1995 and 1996, respectively, resulting in penalties accruing pursuant to Rule 25-30.110(7), Florida Administrative Code. By letter dated January 12, 1998, the utility was notified that the total penalty for failure to timely file the annual reports was \$3,231.00. On February 25, 1998, Citrus County, as receiver for the utility, filed a petition requesting waiver of Rule 25-30.110(7), Florida Administrative Code, requiring the penalties for failure to timely file the annual reports.

Pursuant to Section 120.542(6), Florida Statutes, on March 11, 1998, the Commission provided notice to the Department of State, which published notice of the rule waiver petition in the Florida Administrative Weekly, and the Commission received no comments during the 14-day comment period. After reviewing the petition, the application as filed was determined to be deficient, and on April 3, 1998, an amended petition was filed. No deficiencies were found in the amended petition. Pursuant to Section 120.542(8), Florida Statutes, we are required to issue an order in writing granting or denying the petition for waiver or variance stating the relevant facts and reasons supporting our decision within 90 days of its receipt.

#### SUMMARY AND DISPOSITION OF FINDINGS

The underlying statutes pertaining to Rule 25-30.110(7), Florida Administrative Code, are Sections 367.121(1)(c), and 367.161(2), Florida Statutes. Section 367.121, Florida Statutes, provides that the Commission shall require regular reports from utilities under its jurisdiction consistent with the uniform system and classification of accounts and may require preparation of the reports by a certified public accountant. Rule 25-30.110(3)(a), Florida Administrative Code, which requires utilities subject to the Commission's jurisdiction to file an annual report on or before March 31 of the following year, implements Section 367.121, Florida Statutes. The purpose of requiring annual reports is to enable us

to calculate regulatory assessment fees, as well as to determine if the utility is in an overearnings position.

Section 367.161(2), Florida Statutes, provides that we have the power to impose penalties on utilities under our jurisdiction which refuse to comply with or wilfully violate Florida Statutes, Commission rules, or orders. Rule 25-30.110(7), Florida Administrative Code, which provides for penalties of \$3.00 per day for a Class C utility for failure to timely file its annual report, implements Section 367.161, Florida Statutes. The purpose of requiring payment of penalties for the late filing of annual reports is to promote future compliance with Florida Statutes and Commission rules.

Section 120.542(2), Florida Statutes, in pertinent parts, provides that "variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and that application of the rule would create a substantial hardship or violate principles of fairness. For purposes of this section, substantial hardship means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver."

In its petition, the utility states that it is seeking a waiver because it believes the underlying purpose of the statute has been served in that the utility filed its 1994 and 1995 annual reports on March 21, 1997. Additionally, the necessity of filing future reports no longer exists, because the utility is no longer regulated by the Commission.

The utility also states that the application of the rule would create a substantial hardship on its operations because an examination by the County of the books and records of RHV show that the utility is virtually bankrupt with debts exceeding \$250,000.00 and a monthly income of less than \$12,000.00, most of which is necessary to pay regular operating expenses. The utility also alleges that the imposition of penalties would only penalize the utility customers since they are already paying for debts, operating expenses and necessary repairs required by the Florida Department of Environmental Protection (FDEP).

Based on the foregoing, we find that the underlying purpose of the statute has been achieved in that the annual reports have been filed. We also find that the utility has demonstrated a

ORDER NO. PSC-98-0877-FOF-SU  
DOCKET NO. 971635-SU  
PAGE 4

substantial economic hardship. As stated in its petition, the utility is virtually bankrupt and has a monthly income of less than \$12,000.00, most of which is necessary to pay regular operating expenses. Ordering the imposition of penalties would only penalize the utility customers.

Additionally, we note that there is currently an open docket, Docket No. 961220-SU, relating to a staff-assisted rate case for this utility. Some of the outstanding issues in that docket relate to service violations with the FDEP, which will require plant improvements and probably an interconnection with the County's facilities. In our opinion, this utility's limited assets are better utilized in making the improvements necessary to correct the FDEP violations.

Accordingly, we find that RHV's petition for waiver of Rule 25-30.110, Florida Administrative Code, meets the statutory criteria set forth in Section 120.542, Florida Statutes. Accordingly, RHV's petition for rule waiver is granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that RHV Utility Inc.'s petition for rule waiver of Rule 25-30.110, Florida Administrative Code, is granted. It is further

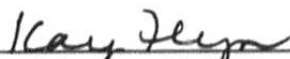
ORDERED that the provisions of this Order issued as proposed agency action shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

ORDER NO. PSC-98-0877-FOF-SU  
DOCKET NO. 971635-SU  
PAGE 5

By ORDER of the Florida Public Service Commission this 2nd  
day of July, 1998.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

  
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Kay Flynn, Chief  
Bureau of Records

( S E A L )

SRF

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 23, 1998.

ORDER NO. PSC-98-0877-FOF-SU  
DOCKET NO. 971635-SU  
PAGE 6

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.