

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer  
of facilities of J. Strauss  
Utility to JEA and cancellation  
of Certificate No. 244-S in  
Duval County.

DOCKET NO. 000241-SU  
ORDER NO. PSC-01-0142-FOF-SU  
ISSUED: January 18, 2001

The following Commissioners participated in the disposition of  
this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER ACKNOWLEDGING EXEMPTION, APPROVING TRANSFER,  
CANCELING CERTIFICATE AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

J. Strauss Utility (J. Strauss or utility) is a Class C utility providing wastewater service to five general service customers in Duval County pursuant to Order No. 7908, issued July 21, 1977, in Docket No. 770495-SU. The utility's 1996 annual report lists annual gross revenues of \$5,804 and a net loss of \$145,820.

On August 22, 2000, the utility filed an application for transfer of the wastewater system in Duval County to the City of Jacksonville's JEA (JEA or buyer). On September 28, 2000, J. Strauss filed its 1996 annual report. Pursuant to information contained in J. Strauss's application, JEA began operating and maintaining the system on March 8, 1997. On May 15, 1997, J. Strauss sold its facilities to JEA, but due to a problem with the property's legal description/survey, JEA did not issue a letter of acceptance for the lift station and sewage force main until January 12, 2000.

We have jurisdiction pursuant to Sections 367.071, 367.022, and 367.156, Florida Statutes.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS-REPORTING

ACKNOWLEDGING EXEMPT STATUS

Our staff has been corresponding with Ms. Cheri Stone, a shareholder of the former utility, Ms. Brenda Staggs-Forbes, JEA Development, and Mr. Mark Horton, Senior Project Manager for Pittman, Hartenstein & Associates, Inc. As a result of these exchanges, we received an application for transfer to a governmental authority, J. Strauss's 1996 annual report, and information indicating that J. Strauss has been exempt from our regulation since March 8, 1997.

On February 9, 1998, we received a letter from Mr. Horton stating that on March 8, 1997, J. Strauss's lift station had begun pumping to JEA's wastewater system and was being maintained by JEA. Further, J. Strauss's application contained a Bill of Sale dated May 15, 1997, for the sale of the utility's sewage lift station and 1070 linear feet of 4 inch PVC sewage force main. Based on the representations made by the utility, JEA, and Mr. Horton, we find that as of March 8, 1997, J. Strauss met the necessary qualifications for an exemption from regulation because it is a system operated, managed, and controlled by a governmental entity, pursuant to Section 367.022(2), Florida Statutes. Therefore, we acknowledge the exempt status of J. Strauss as of March 8, 1997.

As a result of this date of exemption, J. Strauss shall not be required to file annual reports or RAFs for 1998 and 1999. However, it should be noted that J. Strauss has paid RAFs for the period of January 1, 1997 to May 15, 1997, in accordance with Rule 25-30.120, Florida Administrative Code. On September 28, 2000, J. Strauss untimely filed its 1996 annual report.

NO SHOW CAUSE REQUIRED

As previously stated, J. Strauss filed its 1996 annual report on September 28, 2000. Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to our jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Requests for extension of time must be made in writing and filed prior to the March 31 deadline.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is

subject to penalties, absent demonstration of good cause for noncompliance. The penalty set forth in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3 per day. Pursuant to Rule 25-30.110(6)(c), Florida Statutes, we may impose lesser or greater penalties.

Utilities are charged with the knowledge of our rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to timely file its 1996 and 1997 annual reports, would meet the standard for a "willful violation." 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, Florida Administrative Code, 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."

Pursuant to Rule 25-30.110(3)(a), Florida Administrative Code, we require annual reports to be filed to: determine the earnings level of the utility; determine whether a utility is in substantial compliance with the Uniform System of Accounts as well as applicable rules and our orders; whether financial statements and related schedules fairly present the financial condition and results of operations for the period presented; and whether other information presented as to the business affairs of the utility are correct for the period they represent.

Although J. Strauss's failure to timely file its 1996 annual report is an apparent violation of Rule 25-30.110, Florida Statutes, we find that there are circumstances which mitigate the utility's apparent violation. This utility is exempt and we do not need the information regarding the utility's operations on a going-forward basis to meet the requirements of Rule 25-30.110(3)(a), Florida Administrative Code. Therefore, a show cause proceeding shall not be initiated.

APPLICATION

The utility has provided wastewater service to five general service customers since before July 22, 1977. As previously noted, on August 22, 2000, J. Strauss filed an application to transfer the utility system to JEA pursuant to Section 367.071, Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. According to the application, the utility was donated to the City of Jacksonville in 1995. Included with the application is a copy of the May 15, 1997, Bill of Sale signed by a representative of J. Strauss. J. Strauss also provided an Acceptance Letter from JEA dated January 12, 2000, which acts as the official acceptance for ownership, operation, and maintenance of the system.

Pursuant to Section 367.071(4)(a), Florida Statutes, the sale of facilities to a governmental authority shall be approved as a matter of right. The application is in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. As such, no notice of the transfer is required and no filing fees apply.

The application contains a statement that JEA did not request J. Strauss's income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction. Although JEA did not request this information as required by Section 367.071(4)(a), Florida Statutes, our staff supplied JEA with the required information. A statement that the customer deposits and interest thereon were paid to the customers, as required by Rule 25-30.037(4)(g), Florida Administrative Code, was also included in the application. Additionally, pursuant to the requirement of Rule 25-30.037(4)(h), Florida Administrative Code, a statement was included that the utility did pay outstanding regulatory assessment fees through May 15, 1997.

We find that the application is in compliance with all of the provisions of Rule 25-30.037, Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities, in whole or part, to a governmental authority shall be approved as a matter of right. Therefore, we approve, as a matter of right, the transfer of J. Strauss to JEA and Certificate No. 244-S shall be cancelled.

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DOCKET CLOSURE

This docket shall be closed because no further action is required.

Based on the foregoing, it is

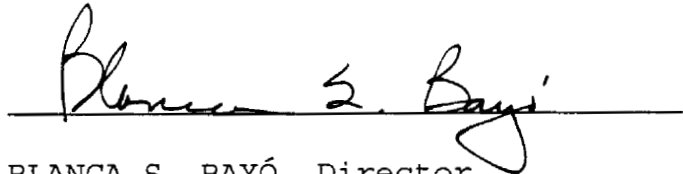
ORDERED by the Florida Public Service Commission J. Strauss Utility, P.O. Box 0953, Bolinas, California 94924, is hereby exempt from Commission regulation pursuant to the provisions of Section 367.022(2), Florida Statutes. It is further

ORDERED that the transfer of J. Strauss Utility to JEA, 21 West Church Street, Jacksonville, Florida 32202, is hereby approved. It is further

ORDERED that Certificate No. 244-S is hereby canceled. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission this 18th day of January, 2001.

A handwritten signature in black ink, appearing to read "Blanca S. Bayó", is written over a horizontal line.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

DTV

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.