

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for transfer of wastewater facility of Sky Acres Enterprises d/b/a Terrace Park Ventures to Pasco County Utilities, and for cancellation of Certificate No. 505-S in Pasco County.

DOCKET NO. 030971-SU
ORDER NO. PSC-04-0084-FOF-SU
ISSUED: January 26, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER APPROVING TRANSFER
CANCELLING CERTIFICATE NO. 505-S IN PASCO COUNTY
AND DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS

BY THE COMMISSION

Background

Sky Acres Enterprises d/b/a Terrace Park Ventures (Terrace Park or utility) is a Class C wastewater utility providing service to 172 residential customers and one general service customer in the mobile home park known as Terrace Park Estates. The system is located in the water resource caution area of the Southwest Florida Water Management District. Water service is provided by Pasco County. Terrace Park was granted Certificate No. 505-S pursuant to Order No. PSC-97-0011-FOF-SU, issued January 2, 1997, in Docket No. 951190-SU, In Re: Application of Sky Acres Enterprises d/b/a Terrace Park Ventures for a Certificate to Provide Wastewater Service in Pasco County.

Pasco County (County) signed a Purchase and Sales agreement with Terrace Park in December, 2002. The County closed on the purchase of Terrace Park for \$10,000 on January 24, 2003, and for purposes of this transfer proceeding we consider that date to be the effective date of the acquisition. On May 31, 2003, Terrace Park notified the Commission that it had sold its wastewater system to the County. On October 7, 2003, an application was filed for the transfer of the facilities to the County and the cancellation of Certificate No. 505-S.

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The utility's 2002 annual report lists operating revenue of \$34,011 and a net operating loss of \$10,474. The utility was late in paying its 2002 Regulatory Assessment Fees (RAFs). According to Rule 25-30.120, Florida Administrative Code, the fees were due by March 31, 2003. The Commission received the fees, plus two months penalties and interest, on June 5, 2003. According to our staff's calculations, Terrace Park still owes a penalty and interest payment of \$91.49.

As described in detail below, this Order addresses the transfer of Terrace Park to Pasco County and whether show cause proceedings should be initiated against the utility for untimely filing of regulatory assessment fees.

Decision

The Transfer

The October 7, 2003, application for the transfer of the wastewater facilities and cancellation of Certificate No. 505-S was filed by Pasco County on behalf of Terrace Park pursuant to Section 367.071(4), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. The County is exempt from the Commission's regulation pursuant to Section 367.022(2), Florida Statutes, because it is a governmental authority. Section 367.071(4)(a), Florida Statutes, provides that the Commission shall approve the sale of facilities to a governmental authority as a matter of right. No notice of the transfer is required and no filing fees apply. The County's application is in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code.

Pursuant to Rule 25-30.037(4)(g), Florida Administrative Code, the application indicates that there are no customer deposits to refund. Terrace Park has provided the County with a listing of current customers along with the customers' addresses and telephone numbers, and the County has obtained Terrace Park's most recently available income and expense statement, balance sheet, income statement for rate base for regulatory purposes, and contributions-in-aid-of-construction pursuant to Rule 25-30.037(4)(e), Florida Administrative Code.

Pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, the utility has filed its 2002 annual report and paid its 2002 RAFs. Terrace Park does, however, owe outstanding penalties and interest for the untimely filing of RAFs. We will address that matter further in the analysis below. The utility has no open dockets pending before the Commission.

We find that the application is in compliance with the provisions of Rule 25-30.037, Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, we approve

the transfer of facilities to Pasco County as a matter of right, effective January 24, 2003, and we hereby cancel Certificate No. 505-S.

The Show Cause for Late Regulatory Assessment Fees

Pursuant to Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each water and wastewater utility is required to remit RAFs annually in the amount of 0.045 of its gross operating revenue. Pursuant to Rule 25-30.120(2), Florida Administrative Code, the obligation to remit the RAFs for any year applies to any utility subject to the Commission's jurisdiction on or before December 31 of that year or for any part of that year. Terrace Park was responsible for RAFs for the year 2002.

As we explained in the Background above, Terrace Park did pay regulatory assessment fees (RAFs) for the year 2002, but it did not pay them in a timely fashion. Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7), Florida Administrative Code, a statutory penalty plus interest will be assessed against any utility that fails to timely pay its RAFs. The penalty plus interest is assessed in the following manner:

- 1) Five percent of the fee if the failure is for not more than 30 days, with an additional five 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 one percent for each 30 days or fraction thereof, not to exceed a total of 12 percent per annum.

Terrace Park paid penalties and interest for two months, but did not include penalties and interest for the month of June, 2003. A balance of \$91.49 remains outstanding, but we have been unable to contact the utility about the remaining penalty and interest, because the utility has been sold to the County and its offices have closed. Because the utility has paid its RAFs and two months of penalties and interest for late filing, and the amount of the penalty and interest for failure to pay on time is so small we find that a show cause proceeding and further Commission efforts to collect the amount would not be cost effective. Therefore, we will not initiate show cause proceedings. Further attempts to collect would be futile, because the utility has been disbanded and is no longer regulated by the Commission. We will refer the utility's unpaid penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible.

Based on the foregoing, it is

ORDERED, as explained in the body of this order, that the application for the transfer of the wastewater facility of Sky Acres Enterprises d/b/a Terrace Park Ventures to Pasco County

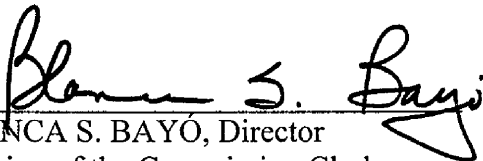
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Utilities, and for cancellation of Certificate No. 505-S in Pasco County, is approved as a matter of right. It is further

ORDERED that no show cause for late payment of Regulatory Assessment Fees shall be issued. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of January, 2004.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

MCB

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 the Commission Clerk and Administrative Services, 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

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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 the Commission Clerk and Administrative Services 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.