

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

MEMORANDUM

October 23, 1997

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TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING ^{FPSC - Records Reporting}

FROM: DIVISION OF WATER AND WASTEWATER (MANN, RIEGER) ^{SR}

 DIVISION OF LEGAL SERVICES (REYES) ^{but}

RE: DOCKET NO. 961220-SU - APPLICATION FOR STAFF-ASSISTED
RATE CASE BY RHV UTILITY, INC.
COUNTY: CITRUS

AGENDA: NOVEMBER 4, 1997 - REGULAR - SHOW CAUSE - INTERESTED
PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE LOCATION: I:\PSC\LEG\WP\961220.RCM

CASE 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

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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 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. 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.

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By Order No. PSC-97-0854-FOF-SU, issued July 16, 1997, the Commission 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. On August 14, 1997, the utility filed a letter with the Commission requesting a sixty day extension of time to respond to the show cause order. This recommendation addresses this request and the disposition of the show cause portion of this proceeding.

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DISCUSSION OF ISSUES

ISSUE 1: Should RHV Utility, Inc.'s request for a sixty day extension of time to respond to Order No. PSC-97-0854-FOF-SU be granted?

RECOMMENDATION: No, RHV Utility, Inc.'s request should be denied as untimely and inappropriate. Pursuant to Order No. PSC-97-0854-FOF-SU, the \$5,000 fine should be imposed without further action of the Commission. Based on information set forth in the staff analysis, staff recommends that the Commission allow the utility additional time to satisfy the mandates of the Fifth Circuit Court. Therefore, staff also recommends that the \$5,000 fine be suspended for six months pending resolution of the current civil proceedings initiated by the Department of Environmental Protection. (REYES)

STAFF ANALYSIS: As stated earlier, by Order No. PSC-97-0854-FOF-SU, issued July 16, 1997, the Commission ordered the utility to show cause within 20 days 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. A response was due on or before August 5, 1997. On August 11, 1997, RHV filed its request for an extension of time to file its response 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 the Commission's Order.

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 also 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. Additionally, 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, staff recommends that the Commission deny the utility's request as untimely and inappropriate. Pursuant to Order No. PSC-97-0854-FOF-

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SU, the fine should be imposed without further action of the Commission.

During the pendency of this proceeding, 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 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, staff recommends that the Commission 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, staff recommends that the \$5,000 fine be suspended for six months pending resolution of the current civil proceedings initiated by the DEP. Upon expiration of the six month suspension, staff will file another recommendation for the Commission's consideration based on the developments which have occurred during that six month period.

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ISSUE 2: Should the docket be closed?

RECOMMENDATION: No, this docket should remain open for staff to verify the utility's compliance with the Department of Environmental Protection's standards. Furthermore, this docket should remain open pending completion by the utility of the construction of the pro forma improvements approved in Order No. PSC-97-0854-FOF-SJ. (REYES, RIEGER)

STAFF ANALYSIS: This docket should remain open for staff to verify the utility's compliance with the Department of Environmental Protection's standards. Furthermore, this docket should remain open pending completion by the utility of the construction of the pro forma improvements approved in Order No. PSC-97-0854-FOF-SU.