

FLORIDA PUBLIC SERVICE COMMISSION  
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MEMORANDUM

April 16, 1998

APR 16 1998  
11:50  
FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (VACCARO) *[Handwritten initials]*  
DIVISION OF WATER AND WASTEWATER (GILCHRIST) *[Handwritten initials]*  
DIVISION OF ADMINISTRATION (SEWELL LAKE) *[Handwritten initials]*

RE: DOCKET NO. 980342-WS - DISPOSITION OF DELINQUENT  
REGULATORY ASSESSMENT FEES OF HOMOSASSA UTILITIES, INC.,  
FORMER HOLDER OF CERTIFICATE NO. 429-S IN CITRUS COUNTY.

AGENDA: APRIL 28, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE LOCATION: I:\PSC\LEG\WP\980342.RCM

CASE BACKGROUND

Homosassa Utilities, Inc. (HUI or utility) was a Class C utility in Citrus County serving 66 water customers and 62 wastewater customers. Based on the information in its 1991 annual report, HUI reported operating revenues of \$92,653. By Order No. PSC-94-1163-FOF-SU, issued September 22, 1994 in Docket No. 930763-SU, the Commission approved the transfer of HUI's Certificate No. 429-S to RHV Utility, Inc (RHV). HUI was incorporated in the State of Florida in June of 1987; however, the corporation was dissolved on August 13, 1993. T.O. Sullivan was Homosassa's registered agent.

Based upon HUI's 1991 annual report, the utility owed \$4,169.39 for 1991 regulatory assessment fees. Staff has also estimated that HUI owes \$4,320.74 for 1992 regulatory assessment fees. The amount of the utility's 1992 regulatory assessment fees

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was estimated, because HUI did not file a 1992 annual report. According to RHV, it acquired no utility records for 1992 when it purchased HUI. To date, HUI has failed to remit its 1991 and 1992 regulatory assessment fees. This recommendation addresses the disposition of those fees.

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**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Homosassa Utilities, Inc. be ordered to show cause within 20 days why it should not remit a statutory penalty in the amount of \$2,122.54 and interest in the amount of \$5,975.70 for violation of Sections 350.113 and 367.145, Florida Statutes and Rule 25-30.120, Florida Administrative Code, for failure to pay 1991 and 1992 regulatory assessment fees?

**RECOMMENDATION:** No. A show cause proceeding against Homosassa Utilities, Inc. should not be initiated. Staff further recommends that the Commission refer Homosassa Utilities, Inc.'s unpaid regulatory assessment fees and associated penalty and interest to the State of Florida Comptroller's Office for permission to write off the account as uncollectible. (VACCARO, SEWELL, LAKE, GILCHRIST)

**STAFF ANALYSIS:** In establishing rates, the Commission includes in its determination of the revenue requirements the utility's obligation to pay regulatory assessment fees. However, this utility failed to pay regulatory assessment fees for 1991 and 1992. Although the utility was transferred to RHV, HUI remains responsible for those fees pursuant to Section 367.071(2), Florida Statutes.

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.

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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.

Notices of delinquency for failure to remit its regulatory assessment fees were mailed to the utility on April 28, 1993, May 21, 1997, January 15, 1998 and March 25, 1998. Notices were mailed to the utility's officers on January 15, 1998, January 30, 1998 and March 25, 1998. As of March 31, 1998, the utility owes the following: \$8,490.13 (\$4,169.39 for 1991 and \$4,320.74 for 1992) in regulatory assessment fees, as well as \$2,122.54 (\$1,042.35 for 1991 and \$1,080.19 for 1992) in penalties and \$5,975.70 (\$3,210.43 for 1991 and \$2,765.27 for 1992) in interest for a total of \$16,588.37. Staff calculated the penalty and interest based on the number of days elapsed since the respective regulatory assessments were due and the date of this agenda. The date of this agenda is included in computing the amount of time elapsed.

Regulatory assessment fees are intended to cover the costs incurred in Public Service Commission regulation of utilities. Apparently, the utility had no inclination to pay the fees voluntarily, nor does it appear that the utility made a good faith effort toward payment. Utilities are charged with the knowledge of the Commission's 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 pay regulatory assessment fees, 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, F.A.C., 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Staff believes that the utility's failure to pay its regulatory assessment fees rises to a level that would normally warrant a show cause proceeding. As stated in the case background,

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this utility was transferred in 1994, and the utility corporation was dissolved on August 13, 1993. Under certain conditions, the directors and shareholders of a dissolved corporation could be held responsible for a distribution of funds prior to the payment of regulatory assessment fees. However, as discussed below, staff does not believe that HUI's directors and shareholders can be held responsible for HUI's delinquent regulatory assessment fees.

Section 607.06401(3), Florida Statutes, provides in pertinent part:

No distribution may be made, if after giving it effect:  
(a) The corporation would not be able to pay its debts as they become due in the usual course of business . . . .

Section 607.0834(1), Florida Statutes provides in pertinent part:

A director who votes for or assents to a distribution made in violation of s. 607.06401 . . . is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating s. 607.06401 . . . if it is established that he did not perform his duties in compliance with s. 607.0830.

To hold a director liable under Section 607.0830, Florida Statutes, it must essentially be shown that the director made the unlawful distribution in bad faith. Furthermore, for a director to be held liable for an unlawful distribution, a proceeding must be "commenced within 2 years after the date on which the effect of the distribution was measured . . . ." Section 607.0834(3), Florida Statutes. In this case, staff does not know when distributions were made. Therefore, it is unclear when the time began to run for holding the directors liable. Further, Section 607.1406(13), Florida Statutes, provides that a shareholder of a dissolved corporation is not liable for any claim against the corporation which is brought after three years of the effective date of dissolution. A proceeding against the shareholders would have required commencement by August 13, 1996.

Based on the foregoing, staff believes that a show cause proceeding and further collection efforts would not be cost effective. As stated earlier in this analysis, staff has already

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made attempts by letter to collect the delinquent regulatory assessment fees, penalty and interest. Therefore, staff recommends that a show cause proceeding not be initiated against HUI for its failure to pay 1991 and 1992 regulatory assessment fees. Staff further recommends that the Commission refer HUI's unpaid regulatory assessment fees and associated penalty and interest to the State of Florida Comptroller's Office for permission to write off the account as uncollectible.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation, upon referral to the Comptroller's Office, no further action will be required, and this docket should be closed.  
(VACCARO)

STAFF ANALYSIS: If the Commission approves staff's recommendation, upon referral to the Comptroller's Office, no further action will be required, and this docket should be closed.