

## Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: August 10, 1998

TO: Steve C. Tribble, Director, Division of Administration

FROM: Tim Vaccaro, Senior Attorney, Division of Legal Services

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

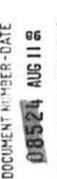
On May 14, 1998, the Commission issued Final Order No. PSC-98-0663-FOF-WS, in which it ordered that a show cause proceeding would not be initiated against Homosassa Utilities, Inc. (HUI or utility) for failing to remit its 1991 and 1992 regulatory assessment fees. The Commission's decision was based on its finding that the utility's wastewater certificate had been transferred and its corporation dissolved. The Commission found that pursuant to Chapter 607, Florida Statutes, the directors and shareholders of the corporation could not be held liable for payment of the regulatory assessment fees.

The Order also required that HUI's delinquent regulatory assessment fees and associated penalties and interest be referred to the Department of Banking and Finance, Comptroller's Office for permission to write off the account as uncollectible.

In light of the foregoing, we submit this matter to your office to forward the account to the Comptroller's Office for permission to write off the account as uncollectible.

The events leading to this determination are outlined below for your convenience:

- HUI was a Class C utility operating in Citrus County. Based on its 1991 annual report, the utility reported operating revenues of \$92,653.
- HUI's Certificate No. 429-S was transferred to RHV Utility, Inc. by Crder No. PSC-94-1163-FOF-SU, issued September 22, 1994 in Docket No. 930763-SU. HUI was incorporated in the State of Florida in June of 1987; however, the corporation was dissolved on August 13, 1993.
- 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, January 30, 1998 and March 25, 1998. Notices of delinquency were mailed to the utility's officers on January 15, 1998, January 30, 1998 and March 25, 1998.
- 4. On May 14, 1998, the Commission issued Final Order No. PSC-98-0663-FOF-WS, in which it ordered that show cause proceedings not be initiated against HUI for failure to remit its 1991 and 1992 regulatory assessment fees. The Commission further ordered that HUI's delinquent regulatory assessment fees and associated penalties and interest be referred to the



SEC \_\_\_\_ WAS \_\_\_\_

ACK \_\_\_\_\_

AFA \_\_\_\_\_

APP \_\_\_\_\_

CAF \_\_\_\_\_

CMU \_\_\_\_\_

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EAG \_\_\_\_

LEG \_\_\_\_\_

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OPC \_\_\_\_\_

Memorandum to Steve C. Tribble, Director August 10, 1998 Page 2

Comptroller's Office for permission to write off the account as uncollectible.

- By Order No. PSC-98-0663-FOF-WS, the Commission found that as of April 30, 1998, the utility owed \$8,490.13 (\$4,169.39 for 1991 and \$4,320.74 for 1992) in regulatory assessment fees, \$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.
- Subsequent to the issuance of Order No. PSC-98-0663-FOF-WS, the
  Division of Administration determined that interest had been miscalculated.
  The correct amount, as of April 30, 1998, was \$5,805.90 (\$3,127.04 for
  1991 and \$2,678.86 for 1992). As a result the total amount owed by the
  utility on April 30, 1998, was \$16, 418.57. This is the appropriate amount
  for write-off.

#### Please find the following attached hereto:

- a. Order No. PSC-98-0663-FOF-WS
- b. Order No. PSC-94-1163-FOF-SU
- c. Delinquent Notice, April 28, 1993
- d. Certified Letter, May 21, 1997, P 407 857 560
- e. Certified Letter, January 15, 1998, P 263 572 556
- f. Certified Letter, January 15, 1998, P 263 572 557
- g. Certified Letter, January 15, 1998, P 263 572 558
- h. Certified Letter, January 15, 1998, P 263 572 559
- i. Certified Letter, January 30, 1998, P 263 572 654
- Certified Letter, January 30, 1998, P 263 572 655
   Certified Letter, January 30, 1998, P 263 572 656
- 1. Certified Letter, January 30, 1998, P 263 572 657
- m. Certified Letter, March 25, 1998, P 263 572 683
- n. Certified Letter, March 25, 1998, P 263 572 684
- Certified Letter, March 25, 1998, P 263 572 685
- p. Certified Letter, March 25, 1998, P 263 572 686

#### TV/dr

cc: Division of Water and Wastewater (Gilchrist)
Division of Administration (Sewell)

#### State of Florida

Commissioners: J. TERRY DEASON, CHAIRMAN THOMAS M. BEARD SUSAN F. CLARK LUIS J. LAUREDO JULIA L. JOHNSON

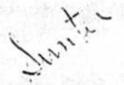


PLETCHER BUILDING 101 EAST GAINES STREET TALLAHASSEE, PL 32399-0864 JAMES A. WARD, DIRECTOR DIVISION OF ADMINISTRATION (904) 488-4733

## Public Service Commission

April 28, 1993

WS559 Homosassa Utilities, Inc. 6608 Walton Way Tampa, FL 33610-5517



## DELINQUENT NOTICE - WATER AND WASTEWATER UTILITY

According to our records, we have not received your 1992 Regulatory Assessment Fee for the period ending December 31, 1992, which was due on March 31, 1993. This is to advise that pursuant to Florida Law, interest at 12% per annum, plus a 5% penalty for each 30-day period or fraction thereof up to a maximum of 25%, will be assessed against any delinquent amount due.

If your Regulatory Assessment Fee Filing is not received in this office by May 12, 1993, your certificate may be canceled and your account referred to the Commission's Division of Legal Services for appropriate action.

Should you have any questions, please contact Mrs. Valorie Moore at Telephone (904) 488-4733.

JAW:ml:rafn.pp

WS559

c: Ms. Sherri Meador Mrs. Valorie Moore

#### STATE OF FLORIDA

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING



DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (904) 413-6199

## Public Service Commission

May 21, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 407 857 560

Mr. T. O. Sullivan Homosassa Utilities, Inc. 853 Tarawit Drive Longboat Key, FL 34228-1832

In re: Homosassa Utilities, Inc.

Dear Mr. Sullivan:

According to our records, Homosassa Utilities, Inc. has not paid regulatory assessment fees (RAFs) for 1991, as required by Section 367.145, Florida Statutes. Pursuant to Rule 25-30.120(2), Florida Administrative Code, RAFs must be paid by March 31st of each year. The Commission may impose administrative penalties plus interest for noncompliance, as provided for under Rule 25-30.120(7), Florida Administrative Code. Staff has determined that Homosassa Utilities, Inc. owes the following:

		PENALTY AND	
YEAR	RAFs	INTEREST	TOTAL
1991	\$4,169.39	\$3,710.76	\$7,880.15

Please submit the balance owed by check made payable to the Florida Public Service Commission. Your payment is due on or before June 2, 1997, and should be mailed with a copy of this letter to the Bureau of Fiscal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Attention: Evelyn Sewell.

Mr. T. O. Sullivan Page 2 May 21, 1997

Pursuant to Rule 25-30.120(7)(a)(2), Florida Administrative Code, Homosassa Utilities, Inc. has an ongoing responsibility to pay interest of one percent every thirty days on the unpaid balance of the RAFs. Please be aware that the above-referenced amounts have been calculated as of June 1, 1997. The amounts owed are subject to change and increase over time, and any delay in payment past June 2, 1997, may subject you to a greater amount. Furthermore, if payment is not made by the date indicated in this letter, the Division of Legal Services will initiate show cause proceedings and recommend assessment of fines in excess of the daily rate pursuant to Rule 25-30.120, Florida Administrative Code. If show cause proceedings are initiated, and the utility is found to be in violation of Commission rules, pursuant to Section 367.161, Florida Statutes, the Commission is authorized to impose fines of up to \$5,000 for each day the violation continues.

Please do not hesitate to contact me at (904) 413-6199, if you have any questions regarding the matters discussed above.

Tim Vaccaro

TV:mw

cc: Division of Administration (Sewell)

Division of Water & Wastewater (Gilchrist)



#### STATE OF FLORIDA

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.



DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (850) 413-6199

## Public Service Commission

January 15, 1998

Homosassa Utilities, Inc. 6608 Walton Way Tampa, Florida 33610-2517

In re: Homosassa Utilities, Inc.

To whom it may concern:

According to our records, Homosassa Utilities, Inc. has not paid regulatory assessment fees (RAFs) for 1991, as required by Section 367.145, Florida Statutes. Pursuant to Rule 25-30.120(2), Florida Administrative Code, RAFs must be paid by March 31st of each year. The Commission may impose administrative penalties plus interest for noncompliance, as provided for under Rule 25-30.120(7), Florida Administrative Code. Staff has determined that Homosassa Utilities, Inc. owes the following:

		PENALTY AND	
YEAR	RAFs	INTEREST	TOTAL
1991	\$4,169	\$4,044.31	\$8,213.70

Although the utility's certificates were transferred by this Commission by Order PSC-921113-FOF-WS, and PSC-94-1163-FOF-SU, the transferor remains responsible for outstanding RAFs pursuant to Section 367.071(2), Florida Statutes. Please submit the balance owed by check made payable to the Florida Public Service Commission. Your payment is due on or before January 26, 1998, and should be mailed with a copy of this letter to the Bureau of Fiscal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850, Attention: Evelyn Sewell.

Pursuant to Rule 25-30.120(7)(a)(2), Florida Administrative Code, Homosassa Utilities, Inc. has an ongoing responsibility to pay interest of one percent every thirty days on the unpaid balance of the RAFs. The amounts owed are subject to change and increase over time, and any delay in payment may subject you to a greater amount. Furthermore, if payment is not made by the date

Homosassa Utilities, Inc. Page 2 January 15, 1998

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Please do not hesitate to contact me at (850) 413-6199, if you have any questions regarding the matters discussed above.

Sincerety

Tim Vaccaro Senior Attorney

TV/dr

cc:

Division of Administration (Sewell)

Division of Water and Wastewater (Gilchrist)



#### STATE OF FLORIDA

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J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.



DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (850) 413-6199

## Public Service Commission

January 15, 1998

Mr. T.O. Sullivan, Registered Agent 710 Old Compass Road Longboat Key, Florida 34228

In re: Homosassa Utilities, Inc.

Dear Mr. Sullivan:

According to our records, Homosassa Utilities, Inc. has not paid regulatory assessment fees (RAFs) for 1991, as required by Section 367.145, Florida Statutes. Pursuart to Rule 25-30.120(2), Florida Administrative Code, RAFs must be paid by March 31st of each year. The Commission may impose administrative penalties plus interest for noncompliance, as provided for under Rule 25-30.120(7), Florida Administrative Code. Staff has determined that Homosassa Utilities, Inc. owes the following:

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Mr. T.O. Sullivan, Registered Agent Page 2 January 15, 1998

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Please do not hesitate to contact me at (850) 413-6199, if you have any questions regarding the matters discussed above.

Sincerely

Tim Vaccaro Senior Attorney

TV/dr

cc: Division of Administration (Sewell)

Division of Water and Wastewater (Gilchrist)

#### STATE OF FLORIDA

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J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.



DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (850) 413-6199

## Public Service Commission

January 15, 1998

Mr. T. O. Sullivan 853 Tarawit Drive Longboat Key, Florida 34228-1832

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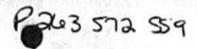
Tim Vaccaro Senior Attorney

TV/dr

cc:

Division of Administration (Sewell)

Division of Water and Wastewater (Gilchrist)



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JOE GARCIA
E. LEON JACOBS, JR.



DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (850) 413-6199

## Public Service Commission

January 15, 1998

Mr. Carl M. Jacobs 1775 60th Terrace, N.E. St. Petersburg, Florida

In re: Homosassa Utilities, Inc.

Dear Mr. Jacobs:

According to our records, Homosassa Utilities, Inc. has not paid regulatory assessment fees (RAFs) for 1991, as required by Section 367.145, Florida Statutes. Pursuant to Rule 25-30.120(2), Florida Administrative Code, RAFs must be paid by March 31st of each year. The Commission may impose administrative penalties plus interest for noncompliance, as provided for under Rule 25-30.120(7), Florida Administrative Code. Staff has determined that Homosassa Utilities, Inc. owes the following:

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Mr. Carl. M. Jacobs Page 2 January 15, 1998

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Sincerely

Tim Vaccaro

Senior Attorney

TV/dr

cc:

Division of Administration (Sewell)

Division of Water and Wastewater (Gilchrist)

## 8 263 SAZ 654

#### STATE OF FLORIDA

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
J. TERRY DEACON
SUSAN F. CLARK
E. LEON JACOBS, JR.
JOE GARCIA



DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (850) 413-6199

## Public Service Commission

January 30, 1998

Mr. Carl M. Jacobs 1775 60th Terrace N.E. St. Petersburg, Florida SECOND NOTICE

In re: Homosassa Utilities, Inc.

Dear Mr. Jacobs:

On January 15, 1998, a letter was sent informing you that Homosassa Utilities, Inc. has not paid regulatory assessment fees (RAFs) for 1991 as required by Section 367.145, Florida Statutes. To date no response to that letter has been received.

As of January 31, 1998, Homosassa Utilities, Inc. owes \$4,169 for RAFs, plus penalties and interest of \$4,044.31, totaling \$8,213.70. Please submit the amount owed by check made payable to the Florida Public Service Commission. Your payment is due on or before February 9, 1998, and should be mailed with a copy of this letter to the Bureau of Fiscal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Attention: Evelyn Sewell.

As stated in our January 15, 1998, letter, Pursuant to Rule 25-30.120(7)(a)(2), Florida Administrative Code, Homosassa Utilities, Inc. has an ongoing responsibility to pay interest of one percent every thirty days on the unpaid balance of the fees. The amount now owed is subject to change and increase over time, and any delay in payment past February 9, 1998, may subject the utility to a greater amount. Furthermore, if payment is not received by the date indicated in this letter, the Division of Legal Services will initiate show cause proceedings and recommend assessment of fines in excess of the daily rate pursuant to Rule 25-30.120, Florida Administrative Code. If show cause proceedings are initiated, and Homosassa Utilities, Inc. is found to be in violation of Commission rules, pursuant to Section 367.161, Florida Statutes, the Commission is authorized to impose fines of up to \$5,000 for each day the violation continues.

Mr. Carl M. Jacobs Page 2 January 30, 1998

If you have any questions regarding this matter, please do not hesitate to call me at (904) 413-6222.

Sincerety

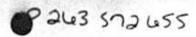
Senior Attorney

TV/dr

cc:

Division of Administration (Sewell)
Division of Water & Wastewater (Gilchrist)

## STATE OF FLORIDA



Commissioners:
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J. TERRY DEACON
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E. LEON JACOBS, JR.
JOE GARCIA



DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (850) 413-6199

## Public Service Commission

January 30, 1998

Homosassa Utilities, Inc. 6608 Walton Way Tampa, Florida 33610-2517

SECOND NOTICE

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Homosassa Utilities, Inc. Page 2 January 30, 1998

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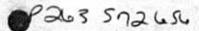
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Tim-Vaccaro Senior Attorney

TV/dr

cc: Division of Administration (Sewell)

Division of Water & Wastewater (Gilchrist)



#### STATE OF FLORIDA

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DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (850) 413-6199

## Public Service Commission

January 30, 1998

Mr. T.O. Sullivan 853 Tarawit Drive Longboat Key, Florida 34228-1832

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Mr. T.O. Sullivan Page 2 January 30, 1998

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Sincerely

Tim Vaccaro

Senior Attorney

TV/dr

cc: Division of Administration (Sewell)

Division of Water & Wastewater (Gilchrist)

## 8263572657

#### STATE OF FLORIDA

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
J. TERRY DEACON
SUSAN F. CLARK
E. LEON JACOBS, JR.
JOE GARCIA



DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (850) 413-6199

## Public Service Commission

January 30, 1998

Mr. T.O. Sullivan 710 Old Compass Road Longboat Key, Florida 34228 SECOND NOTICE

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Mr. T.O. Sullivan Page 2 January 30, 1998

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Sincerely,

Tim Vaccaro Senior Attorney

TV/dr

cc: Division of Administration (Sewell)

Division of Water & Wastewater (Gilchrist)

## P263 572 683

#### STATE OF FLORIDA

Commissioners: JULIA L. JOHNSON, CHAIRMAN J. TERRY DEASON SUSAN F. CLARK JOE GARCIA E. LEON JACOBS, JR.



DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (850) 413-6199

## Public Service Commission

March 25, 1998

Mr. Carl M. Jacobs 1775 60th Terrace N.E. St. Petersburg, Florida

In re: Homosassa Utilities, Inc.

Dear Mr. Jacobs:

I previously informed you by letter that Homosassa Utilities, Inc. (Homosassa) has not paid regulatory assessment fees (RAFs) for 1991, as required by Section 367.145, Florida Statutes. Our records also indicate that Homosassa owes RAFs for 1992. Pursuant to Rule 25-30.120(2), Florida Administrative Code, RAFs must be paid by March 31st of each year. The Commission may impose administrative penalties plus interest for noncompliance, as provided for under Rule 25-30.120(7), Florida Administrative Code. Staff has determined that Homosassa owes the following additional RAFs:

		PENALTY AND	
YEAR	RAFs	INTEREST	TOTAL
1992	\$4,320.74	\$3,845.46	\$8,166.20

Although the utility's certificates were transferred by this Commission by Order PSC-921113-FOF-WS, and PSC-94-1163-FOF-SU, the transferor remains responsible for outstanding RAFs pursuant to Section 367.071(2), Florida Statutes. Please submit the balance owed by check made payable to the Florida Public Service Commission. Your payment is due on or before April 8, 1998, and should be mailed with a copy of this letter to the Bureau of Fiscal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850, Attention: Evelyn Sewell.

Pursuant to Rule 25-30.120(7)(a)(2), Florida Administrative Code, Homosassa Utilities, Inc. has an ongoing responsibility to pay interest of one percent every thirty days on the unpaid balance of the RAFs. The amounts owed are subject to change and increase over time, and any delay in

Mr. Carl M. Jacobs March 25, 1998 Page 2

payment may subject you to a greater amount. Furthermore, if payment is not made by the date indicated in this letter, the Division of Legal Services will initiate show cause proceedings and recommend assessment of fines in excess of the daily rate pursuant to Rule 25-30.120, Florida Administrative Code. If show cause proceedings are initiated, and the utility is found to be in violation of Commission rules, pursuant to Section 367.161, Florida Statutes, the Commission is authorized to impose fines of up to \$5,000 for each day the violation continues.

Please do not hesitate to contact me at (850) 413-6199, if you have any questions regarding the matters discussed above.

Sincerely

Jam Vaccaro Senior Attorney

TV/dr

cc:

Division of Administration (Sewell)

Division of Water and Wastewater (Gilchrist)

P 663 572 684

#### STATE OF FLORIDA

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.



DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (850) 413-6199

## Public Service Commission

March 25, 1998

Mr. T.O. Sullivan 853 Tarawit Drive Longboat Key, Florida 34228-1832

In re: Homosassa Utilities, Inc.

Dear Mr. Sullivan:

I previously informed you by letter that Homosassa Utilities, Inc. (Homosassa) has not paid regulatory assessment fees (RAFs) for 1991, as required by Section 367.145, Florida Statutes. Our records also indicate that Homosassa owes RAFs for 1992. Pursuant to Rule 25-30.120(2), Florida Administrative Code, RAFs must be paid by March 31st of each year. The Commission may impose administrative penalties plus interest for noncompliance, as provided for under Rule 25-30.120(7), Florida Administrative Code. Staff has determined that Homosassa owes the following additional RAFs:

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Mr. T.O. Sullivan March 25, 1998 Page 2

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Sincerely

Tim Vaccaro Senior Attorney

TV/dr

cc:

Division of Administration (Sewell)

Division of Water and Wastewater (Gilchrist)

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.



DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (850) 413-6199

## Public Service Commission

March 25, 1998

Homosassa Utilities, Inc. 6608 Walton Way Tampa, Florida 33610-2517

In re: Homosassa Utilities, Inc.

To whom it may concern:

I previously informed you by letter that Homosassa Utilities, Inc. (Homosassa) has not paid regulatory assessment fees (RAFs) for 1991, as required by Section 367.145, Florida Statutes. Our records also indicate that Homosassa owes RAFs for 1992. Pursuant to Rule 25-30.120(2), Florida Administrative Code, RAFs must be paid by March 31st of each year. The Commission may impose administrative penalties plus interest for noncompliance, as provided for under Rule 25-30.120(7), Florida Administrative Code. Staff has determined that Homosassa owes the following additional RAFs:

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Pursuant to Rule 25-30.120(7)(a)(2), Florida Administrative Code, Homosassa Utilities, Inc. has an ongoing responsibility to pay interest of one percent every thirty days on the unpaid balance of the RAFs. The amounts owed are subject to change and increase over time, and any delay in

Homosassa Utilities, Inc. March 25, 1998 Page 2

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Sincerely

Tim Vaccard

Senior Attorney

TV/dr

cc:

Division of Administration (Sewell)

Division of Water and Wastewater (Gilchrist)

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#### STATE OF FLORIDA

Commissioners: JULIA L. JOHNSON, CHAIRMAN J. TERRY DEASON SUSAN F. CLARK JOE GARCIA E. LEON JACOBS, JR.



DIVISION OF LEGAL SERVICES NOREEN S. DAVIS DIRECTOR (850) 413-6199

## Public Service Commission

March 25, 1998

Mr. T.O. Sullivan 710 Old Compass Road Longboat Key, Florida 34228

In re: Homosassa Utilities, Inc.

Dear Mr. Sullivan:

I previously informed you by letter that Homosassa Utilities, Inc. (Homosassa) has not paid regulatory assessment fees (RAFs) for 1991, as required by Section 367.145, Florida Statutes. Our records also indicate that Homosassa owes RAFs for 1992. Pursuant to Rule 25-30.120(2), Florida Administrative Code, RAFs must be paid by March 31st of each year. The Commission may impose administrative penalties plus interest for noncompliance, as provided for under Rule 25-30.120(7), Florida Administrative Code. Staff has determined that Homosassa owes the following additional RAFs:

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Mr. T.O. Sullivan March 25, 1998 Page 2

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Please do not hesitate to contact me at (850) 413-6199, if you have any questions regarding the matters discussed above.

Sincerely.

Tim Vaccaro Senior Attorney

TV/dr

cc:

Division of Administration (Sewell)

Division of Water and Wastewater (Gilchrist)

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of delinquent regulatory assessment fees of Homosassa Utilities, Inc., former holder of Certificate No. 429-3 in Citrus County.

DOCKET NO. 980342-WS ORDER NO. PSC-98-0663- FOF-WS ISSUED: May 14, 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.

ORDER DECLINING TO INITIATE SHOW CAUSE AND REFERRING DELINOUENT REGULATORY ASSESSMENT FEES. PENALTY AND INTEREST TO COMPTROLLER'S OFFICE FOR PERMISSION TO WRITE-OFF ACCOUNT

BY THE COMMISSION:

#### 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, we 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 HUI's registered agent.

Based upon HUI's 1991 annual report, the utility owes \$4,169.39 for 1991 regulatory assessment fees. We have also estimated that HUI owes \$4,320.74 for 1992 regulatory assessment fees. The amount of the utility's 1992 regulatory assessment fees was estimated, because HUI did not file a 1992 annual report. According to RHV, it acquired no utility records for 1992 when it

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purchased HUI. To date, HUI has failed to remit its 1991 and 1992 regulatory assessment fees.

#### REGULATORY ASSESSMENT FEES

In establishing rates, we include in our 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:

- 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.
- The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% annum.

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: \$6,490.13 (\$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. We calculated the penalty and interest based on the number of days elapsed since the respective regulatory assessments

were due and the date of our vote in this matter. The date of our vote was included in computing the amount of time elapsed.

Regulatory assessment fees are intended to cover the costs incurred in our 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., this Commission, having found that the utility 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.

We believe 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, 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, we do 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, we have no information regarding 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, we find that a show cause proceeding and further collection efforts would not be cost effective. As discussed earlier, we have already made attempts by letter to collect the delinquent regulatory assessment fees, penalty and interest. Therefore, we find that a show cause proceeding shall not be initiated against HUI for its failure to pay 1991 and 1992 regulatory assessment fees. HUI's unpaid regulatory assessment fees and associated penalty and interest shall be referred to the State of Florida Comptroller's Office for permission to write off the account as uncollectible. Upon referral to the Comptroller's Office, no further action will be required, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated against Homosassa Utilities, Inc. for violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code. It is further

ORDERED that Homosassa Utilities, Inc.'s delinquent 1991 and 1992 regulatory assessment fees and associated penalties and interest shall be referred to the State of Florida Comptroller's

Office for permission to write off the account as uncollectible. It is further

ORDERED that upon referral of this matter to the Comptroller's Office, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of May, 1998.

BLANCA S. BAYO, Director Division of Records and Reporting

(SEAL)

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#### 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

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.

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for transfer of Certificate No. 429-S from HOMOSASSA UTILITIES, INC. to RHV UTILITY, INC. in Citrus County.

ORDER NO. PSC-94-1163-FOF-SU ISSUED: September 22, 1994

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman SUSAN F. CLARK JOE GARCIA JULIA L. JOHNSON DIANE K. KIESLING

## ORDER APPROVING TRANSFER

#### AND

ORDER ESTABLISHING RATE BASE FOR PURPOSES OF THE TRANSFER

## BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the establishment of rate base for purposes of the transfer, as 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

On July 30, 1993, an application was filed with this Commission requesting approval of the transfer of Certificate No. 429-S and utility assets from Homosassa Utilities, Inc. (HUI or Utility) to RHV Utility, Inc. (RHV). HUI provides wastewater service to the Riverhaven development located near the City of Homosassa.

to the transfer. transferring without prior Commission approval since HUI filed for benkruptcy subsequent obtain Commission approval prior to selling or transferring its certificate or facilities, we do not find that it is in the public interest to initiate show cause proceedings against HUI for December 7, 1992. Although Section 367.071 (1), Florida Statutes, requires a utility to Upon review of the application, it was determined that the transfer occurred on

has been prohibited from connecting additional customers. In Docket No. 900967-SU, by Order No. PSC-93-0128-FOF-SU, issued July 13, 1993, a portion of the increased revenues complying with Department of Environmental Protection (DEP) requirements. requirements. The funds were released based upon completion of the needed improvements. were placed in escrow to be used to make improvements needed to comply with DEP Riverhaven system has been operating under a consent order without an operating permit and HUI has had ongoing financial and operating problems, including problems

quality service and improve the plant to allow for additional connections. The new owners group of investors made up primarily of property owners within the Riverhaven development. According to the information provided, the new owners intend to provide entered into a new consent agreement to further improve the plant. have worked toward bringing the system into compliance with DEP requirements and have In December 1992, after HUI filed for bankruptcy, the Utility was purchased by a

# Application

367.071. Florida Statutes, and other pertinent statutes and rules. In particular, the application contains a filing fee in the amount of \$150.00, pursuant to Rule 25-30.020, Florida Administrative Code. RHV also provided evidence that it owns the land upon which its facilities are focated, in accordance with Rule 25-30.037(1)(o), Florida Administrative Except as discussed previously, the application is in compliance with Section

such has expired. being transferred. No objections to the application have been received and the time for filing 25-30.030, Florida Administrative Code, including notice to the customers of the system RHV provided proof of compliance with the noticing provisions set forth in Rule

In addition, since the new owners will be serving themselves, they have a vested interest in information provided, it appears that RHV has the financial ability to operate the system. plant operator to oversee the daily operations of the Utility. Further, according to the Since RHV does not have experience in operating utilities, it has retained a certified

days of the date of this Order for entry reflecting the change in ownership. incorporated herein. RHV shall return Certificate No. 429-S to this Commission within 30 authorized to serve is described in Attachment A of this Order which by reference utility from HUI to RHV is in the public interest and it is approved. The territory RHV is upgrading and properly operating the Utility.

Therefore, we find that the transfer of Certificate No. 429-S and the assets of the

## Rate Base

conducted to determine rate base (net book value) at the time of the transfer, December 7. 20, 1991, in Docket No. 900967-SU. An audit of the Utility's books and records has be Rate base was previously established for HUI by Order No. 24937, issued August

Since rate base represents the Utility's investment, the \$60,685 represents cost free assets and improvements which were made but never paid for due to the bankruptcy of the prior owner. also explain that the improvements were made but not paid for due to the bankruptcy of the with a notation or footnote reflecting the actual cost of the improvements. The footnote shall is excluded from rate base. However, RHV shall reflect the \$60,685 on its books as \$0, remove \$6,928 for maintenance items incorrectly included in plant, and \$60,685 for plant As a result of the audit, utility plant-in-service has been decreased by \$67,613 to

the Utility's balance has been adjusted by decreasing the account by \$6,127. Amortization has also been recalculated and increased by \$4,140. addition, the Utility's contributions-in-aid-of-construction (CIAC) have been recalculated and Accumulated depreciation has been decreased based on the adjustment to plant.

extraordinary; therefore, a negative acquisition has not been included in the calculation of Commission's policy that the purchase of a utility at a premium or discount shall not affect the rate base calculation. The circumstances in this exchange do not appear to be the original cost calculation. An acquisition adjustment results when the purchase price of a utility differs from In the absence of extraordinary circumstances, it is this

to establish net book value of the property being transferred and does not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments. No. 1, with adjustments shown on Schedule No. 2. The rate base calculation is used purely Based on the adjustments, we find that rate base for HUI is \$115,192 as of December 7, 1992, the days of transfer. Our calculation of rate base is shown on Schedule

# Rates and Charges

of a utility to adopt and use the rates, classification and regulations of the former owner unless authorized to change by this Commission. index rate increase. Rule 25-9.044(1), Florida Administrative Code, requires the new owner HUI's rates and charges became effective on January 1, 1993, pursuant to a price

service provided or connections made on or after the stamped approval date on the tariff RHV has filed a tariff reflecting the change in ownership. The tariff shall be effective for the Utility's tariff until authorized to change by this Commission in a subsequent proceeding. change them at this time. RHV shall continue to charge the rates and charges approved RHV has not requested to change the rates and charges and we see no reason to ORDERED by the Florida Public Service Commission that the transfer of Certificate No. 429-S and utility assets from Homosassa Utilities, Inc., 7:0 Old Compass Road, Long Boat Key, Florida 34228, to RHV Utility, Inc., 1 Northwest U.S. Highway 19, Post Office Box 2770, Crystal River, Florida 34423, is hereby approved. It is further

ORDERED that RHV Utility, Inc. shall return Certificate No. 429-S to this Commission within 30 days of the effective date of this Order for entry reflecting the change in ownership. It is further

ORDERED that rate base, for purposes of the transfer which reflects the net book value, is \$115,192 as of December 7, 1992, the date of transfer. It is further

ORDERED that, as set forth in the body of this order, RHV Utility, Inc. shall reflect the \$60,685 (cost of improvements) on its books as \$0, with a notation or footnote reflecting the actual cost of the improvements. The footnote shall also explain that the improvements were made but not paid for due to the bankruptcy of the prior owner. It is further

ORDERED that RHV Utility, Inc. shall continue to charge the rates and charges approved in Homosassa Utilities, Inc.'s tariff until authorized to change by this Commission in a subsequent proceeding. The tariff shall be effective for service rendered or connections made, on or after the stamped approval date on the tariff sheets. 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 the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, 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 that this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this <u>22nd</u> day of <u>September</u>. 1994.

> BLANCA S. BAYÓ, Director Division of Records and Reporting

## ATTACHMENT A

## RHV UTILITIES, INC.

## Riverhaven Subdivision

## Territory Description

## Located within Citrus County:

Township 19 South, Range 17 East

Section 29:

South 1/2 of Section 29:

Section 30:

All of said Section 30;

Section 31:

North 1/2 of Section 31;

Section 32:

Northeast 1/4 of Section 32.

Township 19 South, Range 16 East

Section 25:

East 1/2 of Section 25;

Section 36:

Northeast 1/4 of Section 36.

## SCHEDULE NO. 1

## Homosassa Utilities, Inc.

## SCHEDULE OF WASTEWATER RATE BASE

## As of December 7, 1992

DESCRIPTION	BALANCE PER UTILITY	COMMISSION ADJUSTMENTS	BALANCE PER COMMISSION
Utility Plant in			
Service	\$ 890,247	\$ (67,613) (1)	\$ 822,634
land	85,967	0	85,967
Accumulated			
Dep.	(346,966)	6281 (2)	(340685)
CIAC	(711964)	6127 (3)	(705,837)
CIAC			
Amort.	248,973	4140 (4)	253,113
TOTAL	\$ 166,257	\$ (51,065)	\$ 115,192

Footnotes tie to summary number on Schedule 2

## SCHEDULE NO. 2

## Homosassa Utilities, Inc.

## SCHEDULE OF RATE BASE ADJUSTMENT (as of December 7, 1992)

DESCRIPTION	ADJUSTMENT
Utility Plant in Service	
(1) To remove maintenance expenses recorded as plant. To remove additions which	\$ (6,928)
were not paid for due to bankruptcy.	\$ (60,685)
Total Plant-in-Service	\$ (67.613)
Accumulated Depreciation	
(2) Recalculate to transfer date based upon adjusted plant	\$ 6.281
Contributions-in-Aid-of-Construction	
(3) Reflect Staff calculation	\$ 6.127
CIAC Amortization	
(4) Recalculate to transfer date	\$_4,140
TOTAL	\$ 51.065