

State of Florida



Public Service Commission

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RECORDS AND REPORTING
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DATE: OCTOBER 22, 1998
TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)
FROM: DIVISION OF WATER AND WASTEWATER (WALKER, REDEMANN)
DIVISION OF LEGAL SERVICES (BRUBAKER, FERGUSON)
RE: DOCKET NO. 980307-WS - APPLICATION FOR CERTIFICATE TO
PROVIDE WATER AND WASTEWATER SERVICE IN ORANGE COUNTY BY
ZELLWOOD STATION CO-OP, INC.
COUNTY: ORANGE
AGENDA: 11/03/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR
ISSUE 4 - INTERESTED PERSONS MAY PARTICIPATE
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\WAW\WP\980307.RCM

CASE BACKGROUND

Zellwood Station Co-Op, Inc. (Zellwood or utility), is a Class C utility that provides water and wastewater service in Orange County for about 1,200 customers in an area known as Zellwood Station. Residents of Zellwood Station, a 619-acre mobile home park, include Zellwood's member tenant-shareholders, non-member lessees, and non-member condominium owners. Zellwood members own approximately 917 home sites, including 130 that are leased and about 200 that are presently vacant. About 283 lots are owned by three condominium associations: Banbury Village Association, Oak Grove Association, and Citrus Ridge Association. The utility also serves a small number of commercial and urban landscape irrigation customers. In 1996, Zellwood recorded annual revenues of \$209,334 for its combined water and wastewater systems.

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FPSC-RECORDS/REPORTING

The utility was constructed as part of the development in 1977, and has been operating without a certificate since then. Zellwood acquired the utility facilities and assets in 1993 from the previous owner in the course of a bankruptcy proceeding. On March 2, 1998, Zellwood filed an application for a certificate to provide water and wastewater service in Orange County in accordance with Section 367.045, Florida Statutes. The utility has a water distribution system, a water treatment plant, a wastewater collection system, and a wastewater treatment plant.

Twenty-two letters opposing Zellwood's application were filed by customers. The principal objection was that smaller charges were established by developer agreements with the condominiums. Some customers also questioned whether the utility needed to be certified. Through telephone calls and letters, staff responded to various questions about the Commission's jurisdiction, how the application process works, and how developer agreements and other issues are examined. Staff also asked the customers to clarify their objections and to indicate whether they were requesting a hearing. A reply was received from each customer. With one exception, Banbury Village Association (Banbury), all of the objecting customers wanted their letters placed in the correspondence portion of this docket. Pursuant to the protest by Banbury, dated March 31, 1998, this matter was set for an administrative hearing.

By Order No. PSC-98-0707-PCO-WS, issued May 21, 1998, the Pre-Hearing Officer issued an Order Establishing Procedure scheduling the prehearing conference for November 30, 1998, and the hearing for December 16-17, 1998. However, pursuant to No. PSC-98-1004-PCO-WS, issued July 24, 1998, these dates were rescheduled to February 3, 1999 and March 8-9, 1999, for the prehearing and hearing dates, respectively. On September 4, 1998, the parties filed a proposed joint stipulation with the Commission. Pursuant to the stipulation, Banbury withdrew its protest on September 17, 1998.

This recommendation addresses whether the utility's application for certificates should be granted, whether the joint stipulation should be approved, whether the utility should be show caused for operating without a certificate, and whether the utility should be required to pay regulatory assessment fees and file an annual report.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Zellwood Station Co-Op, Inc. to show cause, in writing within twenty-one days, why it should not be fined for violation of Section 367.031, Florida Statutes.

RECOMMENDATION: No, show cause proceedings should not be initiated. (BRUBAKER)

STAFF ANALYSIS: As stated in the Case Background, Zellwood Station Co-Op, Inc. is in apparent violation of Section 367.031, Florida Statutes, which states, in part, "Each utility subject to the jurisdiction of the commission must obtain . . . a certificate of authorization to provide water or wastewater service." The system has been in existence since 1977 and the Zellwood cooperative was formed in 1993. The utility has been providing water and wastewater service without a certificate since its inception. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. 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 "[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." Id. at 6.

Zellwood purchased the utility facilities and assets in 1993 from the previous owner in the course of a bankruptcy proceeding. Zellwood's failure to obtain a certificate prior to providing service appears to be due to lack of knowledge of the statutes and Commission rules. Zellwood became aware of this Commission's regulation and of the necessity to obtain a certificate when it renewed its Florida Department of Environmental Protection (FDEP) consumptive use permit in 1996. Upon learning that it was subject to Commission regulation, Zellwood contacted Commission staff to discuss the matter. Zellwood informed staff that it intended to file a certificate application jointly with a request to establish its initial rates and charges. Zellwood had considerable difficulty obtaining the records and information necessary to prepare its application from the utility's former owner. Once all

such information had been obtained to the best of Zellwood's ability, the instant application was prepared and filed with the Commission.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, staff does not believe that the apparent violation of Section 367.031, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Zellwood contacted Commission staff upon becoming aware of the Commission's jurisdiction over the utility. In addition, Zellwood has been very responsive to staff's requests for information. Therefore, staff recommends that the Commission not order Zellwood to show cause for failing to obtain a certificate prior to providing water service.

ISSUE 2: Should Zellwood Station Co-Op, Inc. be issued operating certificates for a utility in existence that provides water and wastewater service in Orange County?

RECOMMENDATION: Yes. Zellwood Station Co-Op, Inc. should be issued Water Certificate No. 602-W and Wastewater Certificate No. 518-S to provide service in Orange County, as described in Attachment A. (WALKER, REDEMANN)

STAFF ANALYSIS: On March 2, 1998, Zellwood filed an application to receive operating certificates for an existing utility that provides water and wastewater service in Orange County. Other than as discussed in Issue 1, the application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning original certificates for an existing utility currently charging for service. The application contains a check in the amount of \$3,000, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. In addition, the applicant has provided evidence that the utility owns the land upon which its water and wastewater treatment facilities are located, as required by Rule 25-30.034(1)(e), Florida Administrative Code.

Adequate territorial descriptions and system maps for the proposed service areas have been filed as prescribed by Rule 25-30.034(1) parts (h), (i) and (j), Florida Administrative Code. A description of the territory requested by the applicant is appended to this recommendation as Attachment A.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers in the proposed territory. A number of initial objections to the proposed application were received, but with one exception, the objecting customers elected not to protest the application at this time. One party, the Banbury Village Association, Inc., protested the application, but subsequently joined in a stipulation to grant the requested certificates.

Concerning its financial and technical abilities, Zellwood reported that this utility has provided efficient and sufficient service to its service area for more than 20 years. Further, Zellwood also reported that it has adequate capacity to serve projected growth. Staff contacted the FDEP and was informed that Zellwood's water and wastewater facilities are in satisfactory condition. At this time, Zellwood is not subject to any outstanding violations.

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Based on the above information, staff believes it is in the public interest to grant the application for original certificates. Accordingly, staff recommends that Zellwood Station Co-Op, Inc., System be granted Water Certificate No. 602-W and Wastewater Certificate No. 518-S to serve the territory that is described in Attachment A.

ZELLWOOD STATION CO-OP, INC.

WATER AND WASTEWATER SERVICE AREA

ORANGE COUNTY

A portion of land in Sections 25, 26, and 35, Township 20 South, Range 27 East, Orange County described as follows:

PARCEL 1:

Begin at a point on the West line of Section 25, Township 20 South, Range 27 East, Orange County, Florida, said point being 30.00 feet South of the Northwest Corner of said Section 25; thence run North 85°44'53" East, along the South line of the North 30.00 feet of the West half of said Section 25, 2645.959 feet to a point on the North-South quarter section line, said point being 30.00 feet South of the North quarter corner of said Section 25, thence run North 87°35'27" East, along the South line of the North 30.00 feet of the East half of said Section 25, 1349.217 feet to a point on the East line of the West three quarters of said Section 25, thence run South 02°46'51" East, along the East line of the West three-quarters of said Section 25, 5283.769 feet to a point 30.00 feet North of the South line of said Section 25; thence run South 86°50'37" West, along the North line of the South 30.00 feet of said Section 25, 1322.303 feet to a point on the North-South Quarter section line of said Section 25, said point being 30.00 feet North of the South quarter corner of said Section 25; thence run South 86°50'37" West along the north line of the South 30.00 feet of said Section 25, 2229.402 feet to a point 430.00 feet East of the West line of said Section 25, thence run North 02°58'42" West, parallel to the West line of said Section 25, 95.00 feet, thence run South 86°50'37" West, parallel to the South line of said Section 25, 430.00 feet to a point on the West line of said Section 25, thence run South 02°58'42" East along the West line of said Section 25, 95.00 feet to a point 30.00 feet North of the Southwest corner of said Section 25, thence run South 87°09'16" West, along the north line of the South 30.00 feet of Section 26, Township 20 South, Range 27 East, 2629.027 feet to a point on the North-South quarter Section line of said Section 26, said point being 30.00 feet north of the South Quarter corner of said Section 26, thence run South 86°45'34" West, along the North line of the South 30.00 feet of said Section 26, 16.523 feet to a point of intersection with the northerly right of way of State Road 441, said point being on a curve concave southwesterly and having a radius of 5859.65 feet and tangent bearing at said point of North 42°14'25" West; thence run northwesterly, along said curve and northerly right of

way, 588.174 feet through a central angle of $05^{\circ}45'04''$ to the point of tangency of said curve, thence run North $47^{\circ}59'29''$ West, continuing along said northerly right of way, 850.808 feet to a point of intersection with the East line of the West 330.00 feet of the East half of the southwest quarter of said Section 26, thence run North $03^{\circ}22'34''$ West along said East line of the West 330.00 feet 371.027 feet to a point 93.00 feet North of the North line of the southeast quarter of the southwest quarter of said Section 26, thence run North $87^{\circ}07'09''$ East, parallel to the North line of said southeast quarter of the southwest quarter 1003.52^A feet to a point of intersection with the North-South quarter section line of said Section 26, thence run North $03^{\circ}27'28''$ West, along the North-South Quarter section line of said Section 26, 3300.103 feet to a point 699.00 feet South of the North quarter corner of said Section 26, thence run North $89^{\circ}49'16''$ East, parallel to the North line of the East half of said Section 26, 788.00 feet; thence run North $03^{\circ}27'28''$ West parallel to the North-South quarter section line of said Section 26, 669.00 feet to a point 30.00 feet South of the North line of the East half of said Section 26, thence run North $89^{\circ}49'16''$ East, along the South line of the North 30.00 feet of the East half of said Section 26, 1894.646 feet to the Point of Beginning.

PARCEL 2:

A parcel of land lying in the northwest quarter of the northeast quarter of Section 35, Township 20 South, Range 27 East, Orange County, Florida, said parcel being more particularly described as follows: From the northwest corner of the northwest quarter of the northeast quarter of Section 35, Township 20 South, Range 27 East, thence run North $87^{\circ}09'16''$ East, along the North line of the northeast quarter of said Section 35, 7.536 feet to a point on the northerly right of way line of State Road No. 441, said point being on a curve concave Southwesterly and having a radius of 5859.65 feet and a tangent bearing at said point of South $41^{\circ}51'47''$ East, thence run Southeasterly, along said curve and Northerly right of way line, 38.510 feet through a central angle of $00^{\circ}22'36''$ to a point, said point being on the Southerly right of way line of Yother Road and having a tangent bearing of South $41^{\circ}29'12''$ East, said point also being the Point of Beginning; thence run North $87^{\circ}09'16''$ East, along said southerly right of way line of Yother Road, 160.332 feet to an intersection with the Northerly right of way line of Merrimac Drive; thence run South $48^{\circ}51'14''$ West, along said northerly right of way line of Merrimac Drive, 126.076 feet to a point, said point being on the northerly right of way line of said State Road No. 441 and on a curve with a tangent bearing at said point of North $40^{\circ}30'54''$ West, thence run northwesterly, along said curve and northerly right of way line of said State Road No. 441, 99.373 feet through a central angle of $00^{\circ}58'18''$ to the Point of Beginning

PARCEL 3:

From the Northwest Corner of the Northeast 1/4 of Section 35, Township 20 South, Range 27 East, Orange County, Florida, run North $87^{\circ}09'16''$ East along the north line of said Northeast 1/4 of Section 35 a distance of 760.52 feet to the Point of Beginning, thence continue North $87^{\circ}09'16''$ East along said North line 348.97 feet to a point on a curve concave Southeasterly and having a radius of 585.60 feet; said point also being on the Northwesternly right of way line of Yothers Road, as recorded in O.R. Book 2658, Page 1318, of the Public Records of Orange County, Florida, thence from a tangent bearing Of South $55^{\circ}53'46''$ West, run Southwesterly along the arc of said curve and said northwesterly right of way line 43.28 feet through a central angle of $04^{\circ}14'05''$ to a point of compound curvature of a curve concave southeasterly and having a radius of 526.37 feet thence run Southerly along the arc of said curve 115.87 feet through a central angle of $12^{\circ}36'45''$; thence leaving said Northwesternly right of way line run North $50^{\circ}57'04''$ West 37.04 feet to a point on a curve concave northerly and having a radius of 243.00 feet thence from a tangent bearing of South $82^{\circ}04'38''$ West run Westerly along the arc of said curve 220.63 feet through a central angle of $52^{\circ}01'15''$ to a Point of Beginning.

ISSUE 3: Should the stipulation be approved?

RECOMMENDATION: Yes. The proposed stipulation should be approved.
(WALKER, FERGUSON)

STAFF ANALYSIS: As discussed in the Case Background, on March 31, 1998, Banbury Village Association, Inc. (Banbury) filed a protest with respect to Zellwood's application for certificates of authorization and its proposed initial rates and charges. Since May of 1998, Zellwood and Banbury have been engaged in settlement negotiations to resolve their respective differences. On September 2, 1998, Zellwood and Banbury signed a stipulation that appears to obviate the need for an administrative hearing relative to Zellwood's application for certification and its proposed initial rates and charges.

The parties agreed that Zellwood should be issued original certificates for its requested service territory. They also agreed that Zellwood should be granted the initial monthly service rates it proposed, or \$15.10 for water service and \$20.43 for wastewater service. Also, they agreed that Zellwood's proposed conservation rate of \$5.27 should apply for residential and general service water use in excess of 10,000 gallons per month and less than 20,000 gallons per month. However, Zellwood's proposed tariff does not address collection of an increased conservation rate when usage exceeds 20,000 gallons per month. Instead, the tariff provides a mechanism whereby the equivalent residential connection (ERC) factor may be enlarged if a customer's average usage exceeds certain predetermined amounts (i.e. 25,000 gallons per month), but only after 24 months of recorded usage. Thus, the conservation rate element will not exceed \$5.27 per month, per ERC regardless of actual usage. The stipulation does not address all elements in Zellwood's proposed tariff, since miscellaneous service charges and service availability charges are also requested. These tariff issues are reviewed in Issue 4 as proposed agency action measures.

In return for acceptance of its proposed rates, Zellwood agreed it would retain those rates for at least three years, or until September 2, 2001, with the exception that the utility may file index applications. Zellwood further agreed that it would not impose the conservation rate until all occupied lots in Zellwood are metered. In addition, Zellwood agreed that before September 2, 2001, it will file an application to establish new rates and charges, thereby providing an opportunity for all interested parties to participate in that subsequent proceeding. In return for Zellwood's promise, Banbury agreed to stipulate to the

appropriateness of Zellwood's proposed initial conservation and service rates and to withdraw its protest.

The agreement to stipulate this case provides a measure of comfort with respect to some initial shortcomings in Zellwood's proposed rate design. An original cost study is needed to fully support Zellwood's claimed investment in plant facilities. Further, Zellwood's projected expenses and its proposed billing structure must be examined using conservation principles. However, we believe these problems can be addressed in a future rate proceeding when actual consumption data is known and more complete information is available.

Staff recommends approval of the proposed stipulation. Before this proceeding, Zellwood was charging its residential customers \$17.50 per month without regard to the level of actual usage. Zellwood is now installing meters to register actual consumption and has agreed to request usage-sensitive rates after a three-year trial period. Zellwood believes its customers need time to learn how to moderate their usage.

Zellwood is a cooperative housing corporation that provides service throughout the Zellwood Station community. While the predominate group of Zellwood's customers are its own member tenant-shareholders, condominium associations like Banbury are the second largest group. Zellwood believes that imposing metered rates at this time may create unnecessary conflicts with respect to existing agreements with the condominium owners. Although it initially opposed Zellwood's proposed rates, Banbury has now stipulated that those rates should be approved.

Staff believes that the agreement to retain these rates for three years benefits Zellwood's customers. In addition, we believe that settlement of this matter will result in savings of both time and money for Zellwood, Banbury, and other customers. After its proposed rates are implemented, Zellwood will stop billing the \$17.50 charge that it presently collects through its maintenance fee. Based upon the above, the staff recommends approval of the proposed Settlement Agreement.

ISSUE 4: What rates and charges should be approved?

RECOMMENDATION: The rates and charges as detailed in the staff analysis should be approved. The tariff should be effective for services rendered or connections made on or after the stamped approval date of the tariff. (WALKER)

STAFF ANALYSIS: At this time, Zellwood is billing its residential customers a flat, monthly rate of \$17.50 for water and wastewater service. For this proceeding, Zellwood has requested charges that are also basically fixed amounts. For a typical residential customer, a \$15.10 rate is proposed for water service, a \$5.27 surcharge is added if usage exceeds 10,000 gallons per month, and \$20.43 is proposed for wastewater service. Also, after meters are installed, and a customer's average usage for 24 months is known and shared with the customer, Zellwood may impose a penalty for excessive water consumption. For a typical residential customer, when excessive use is detected, the customer's ERC number will increase as follows: 2 ERCs for using 25,000 gallons, 3 ERCs for 36,000 gallons, 4 ERCs for 48,000 gallons, 5 ERCs for 60,000 gallons, and 1 added ERC for each successive 10,000 gallon increment.

Zellwood contends that collection of these rates is needed to permit recovery of its operating expenses and interest costs relative to its investment in plant facilities. Zellwood asserts that a \$5.27 increment for usage beyond 10,000 gallons and the ERC multiplier effect are needed to comply with its water consumption permit, which is issued by the St. Johns River Water Management District (SJRWMD). That agency ordered Zellwood to institute certain measures designed to reduce its water usage, including the following: a) to individually meter all residential water connections by December 31, 1998; b) to conduct a detailed water audit by December 31, 2000; c) to initiate a leak detection and repair program for its water distribution and irrigation systems; and d) to submit a residential water rate structure before the Florida Public Service Commission.

Zellwood's water consumption permit was issued on or about August 13, 1997. SJRWMD found that residential water use by Zellwood's customers may approach 308 gallons per day (gpd), whereas a 150 gpd standard should be attained. Although 10 years is the usual duration for consumptive use permits, SJRWMD granted Zellwood a 5-year permit to hasten conservation measures. By letter dated August 27, 1998, Dwight T. Jenkins, as Director of Water Use Regulation for SJRWMD, stated that his staff does not object to Zellwood's proposed temporary rate structure in order to

provide Zellwood sufficient time within which to install individual meters and to collect necessary water use data to support a permanent conservation rate structure.

An audit investigation was conducted in this case, and a prominent finding was that original cost records were not available for inspection. Consequently, submission of an original cost study is essential, which Zellwood acknowledged in response to interrogatories propounded by staff

As noted in Issue 3, staff recommends approval of the stipulation regarding Zellwood's proposed initial base facility and gallonage charges. Banbury agreed to these measures, but other customers may disagree. As noted, the stipulation provides a three-year transition period to help acclimate customers to usage-based rates, as well as time table within which to prepare a rate application. The stipulation does not address meter deposits, miscellaneous service fees, or service availability charges. Since these charges were not stipulated, Banbury may oppose their collection.

The staff recommends approval of the following base facility and gallonage charges, which Banbury cannot dispute, and the following meter deposits, miscellaneous charges, and service availability charges:

Water Tariff
Residential and General Service - Monthly Rates

<u>Meter Size</u>	<u>Flat Rate:</u>	<u>Surcharge:</u>	<u>Usage after:</u>
5/8 x 3/4"	\$15.10	\$5.27	10,000
Full 3/4"	\$22.65	\$7.90	15,000
1"	\$37.75	\$13.17	25,000
1 1/2"	\$75.50	\$26.35	50,000
2"	\$120.80	\$42.16	80,000
3"	\$241.60	\$84.32	160,000
4"	\$377.50	\$131.75	250,000
6"	\$755.00	\$263.50	500,000
8"	\$1,208.00	\$421.59	800,000
10"	\$1,736.50	\$606.04	1,150,000

Wastewater Tariff
Residential and General Service - Monthly Rates

<u>Meter Size</u>	<u>Flat Rate:</u>
5/8 x 3/4"	\$20.43
Full 3/4"	\$30.65
1"	\$51.08
1 1/2"	\$102.15
2"	\$163.44
3"	\$326.88
4"	\$510.75
6"	\$1,021.50
8"	\$1,634.40
10"	\$2,349.45

Customer Deposits

Zellwood waives its right to collect deposits at this time.

Meter Test Deposits

<u>Meter Size:</u>	<u>Charge</u>
5/8 x 3/4"	\$20.00
1" and 1 1/2"	\$25.00
2" and over	Actual Cost

Miscellaneous Service Charges

Initial Connection Fee:	\$ 15.00
Normal Reconnection Fee:	\$ 20.00
Violation Reconnection Fee:	\$ 20.00
Premises Visit Fee:	\$ 15.00

Service Availability Charges

Water Tariff Amount

Customer Connection (Tap-in) Charge

5/8" x 3/4"	\$195.00
Full 3/4"	\$195.00
1"	\$225.00
1 1/2"	\$365.00
2" and above	Actual Cost

Meter Installation Fee

5/8" x 3/4"	\$193.00
Full 3/4"	\$193.00
1"	\$210.00
1 1/2"	\$285.00
2" and above	Actual Cost

Main Extension Charge - Residential per ERC	\$31.00
Plant Capacity Charge - Residential per ERC	\$141.00
Reserve Capacity Charge - Residential per ERC	\$61.00

Wastewater Tariff

	<u>Amount</u>
Main Extension Charge - All Customers	\$145.00
Plant Capacity Charge - All Customers	\$125.00
Reserve Capacity Charge - All Customers	\$95.00

The utility has filed a tariff which reflects the above rates and charges. Staff recommends that they be approved as submitted. Staff further recommends that Zellwood be required to continue to charge these rates and charges until authorized to change by the Commission. The tariff should be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets.

ISSUE 5: Should the utility be required to pay regulatory assessment fees for calendar year 1998 and file a 1998 annual report with the Commission?

RECOMMENDATION: Yes, the utility should be required to remit regulatory assessment fees for calendar year 1998 and file a 1998 annual report. (WALKER)

STAFF ANALYSIS: Pursuant to Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code, annual reports and regulatory assessment fees are due from regulated utilities, regardless of whether or not a certificate has been granted. It appears that this utility system may have been subject to Commission jurisdiction since its formation in 1977. Zellwood, the present owner, acquired this system in 1993 after the former owner was declared bankrupt. On or about August 12, 1997, Zellwood was issued a water consumption permit for its service area by SJRWMD. As the regional water authority, SJRWMD ordered Zellwood to submit a rate application before this Commission to facilitate individual metering of customers to promote conservation. Zellwood filed its application for certification on March 2, 1998.

On several occasions before March of 1998, the Commission's technical staff met with representatives for Zellwood to discuss the format for an application for an original certificate for an existing system that already charges for service. This coordination of effort continued while the application was being prepared. In essence, Zellwood was on notice about the Florida Statutes and Commission rules before its application was filed.

Pursuant to Sections 350.113, 367.021(12) and 367.145, Florida Statutes, as soon as Zellwood began charging for water and wastewater services for compensation, the utility was subject to regulatory assessment fees.

Rule 25-30.120(2), Florida Administrative Code states:

The obligation to remit the regulatory assessment fees for any year shall apply to any utility which is subject to this Commission's jurisdiction on or before December 31 of that year or for any part of that year, whether or not the utility has actually applied or been issued a certificate.

Further, pursuant to Rule 25-30.110(3)(a), Florida Administrative Code, the Commission requires annual reports to be filed to determine the earnings level of the utility; to determine whether a utility is in substantial compliance with the Uniform

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System of Accounts as well as applicable rules and orders of the Commission; to determine whether financial statements and related schedules fairly present the financial condition and results of operations for the period presented; and to determine whether other information presented as to the business affairs of the utility are correct for the period they represent.

The former developer of the Zellwood community was declared bankrupt in 1993, when the present utility was formed. It further appears that Zellwood did not learn about this Commission's regulatory authority until 1997, when SJRWMD approved Zellwood's water consumption permit. Since Zellwood has filed an application for an original certificate, staff does not believe that annual report information before 1998 would be meaningful under these conditions. Zellwood contacted the Commission at the end of 1997, and filed an application in early 1998. In the past, the Commission has required that utilities applying for original certificates to pay regulatory assessment fees from the time that staff became aware of the utility's existence. As staff did not become aware of Zellwood's existence until the end of 1997, staff believes it is reasonable that the utility be required to pay regulatory assessment fees for 1998. Considering these matters, we do not believe Zellwood's application for a certificate was unreasonably tardy in this case. Therefore, staff believes that Zellwood should be required to file an annual report and only remit regulatory assessment fees for the calendar year 1998.

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ISSUE 6: Should this docket be closed?

RECOMMENDATION: Yes, upon expiration of the protest period, if no timely protest is filed, this docket should be closed administratively. (FERGUSON)

STAFF ANALYSIS: Upon expiration of the protest period, if no timely protest is filed, this docket should be closed administratively.