



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: NOVEMBER 5, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (BRUBAKER) *JSB*
 DIVISION OF WATER AND WASTEWATER (GROOM) *JH*
 DIVISION OF ADMINISTRATION (KNIGHT) *JK*

RE: DOCKET NO. 981344-WU - SHOW CAUSE PROCEEDINGS AGAINST
 BLANTON LAKE UTILITIES COMPANY IN PASCO COUNTY FOR
 VIOLATION OF RULES 25-30.110(3), F.A.C., RECORDS AND
 REPORTS, ANNUAL REPORTS; AND 25-30.120, F.A.C., REGULATORY
 ASSESSMENT FEES

AGENDA: NOVEMBER 17, 1998 - REGULAR AGENDA - INTERESTED PERSONS
 MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: I:\PSC\LEG\WP\981344SU.RCM

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CASE BACKGROUND

Blanton Lake Utility Company (Blanton Lake or utility) is a Class C utility located in Pasco County serving an area west of Dade City. By Order No. PSC-92-1301-FOF-WU, issued November 12, 1992, Blanton Lake obtained Water Certificate No. 328-W. The service area consists of approximately 24 acres with 53 homes. Blanton Lake's 1993 Annual Report indicates that the system had a gross revenue amount of \$7,917.00 and a net loss of \$45.00.

On June 8, 1994, pursuant to Section 367.165, Florida Statutes, Mr. Stephen J. Matala, owner of Blanton Lake, filed a notice of abandonment with the Florida Public Service Commission (Commission), the Florida Department of Environmental Protection (DEP) and the United States Environmental Protection Agency. On July 26, 1994, by Order No. PSC-94-0919-FOF-WS, this Commission

DOCUMENT NUMBER-DATE

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acknowledged Blanton Lake's abandonment of its system. Further, Mr. Matala, as prior owner of Blanton Lake, did not remit the utility's regulatory assessment fees for 1992 and 1993.

The Circuit Court of the Sixth Judicial Circuit, in and for Pasco County, Florida, appointed Pasco County Utility Department (Pasco County) the temporary receiver of Blanton Lake in September, 1994. In the Order Appointing Receiver, the Circuit Court ordered the prior owner to surrender to the receiver all property, assets, documents, and facilities pertaining to the Blanton Lake system. Mr. Matala complied and surrendered all of Blanton Lake's existing records. The Circuit Court further ordered Pasco County to operate and maintain the utility, collect all revenues, as well as provide adequate and continuous water service. Additionally, Pasco County was required to pay all operating expenses from the revenues it receives. The Circuit Court also ordered Pasco County to keep the revenues it collects in an insured banking account, but it has allowed Pasco County to authorize construction to improve the system.

Beginning July 1, 1994, Pasco County received authority to collect all water fees from Blanton Lake's customers. Pursuant to the Circuit Court Order, Mr. Matala was required to pay any outstanding mortgage on the property. Pasco County was held responsible for mortgage payments during its receivership, including July 1994. Pursuant to Order No. PSC-94-1235-FOF-WU, issued October 11, 1994, the Commission acknowledged the Circuit Court's appointment of Pasco County as receiver for Blanton Lake.

To the best of staff's knowledge, Pasco County has operated the Blanton Lake facility efficiently. However, by letter dated April 15, 1996, Pasco County was notified that the 1995 regulatory assessment fee for Blanton Lake had not been received by the Commission, and that pursuant to Florida law, penalty and interest would be assessed against any delinquent amount due. A similar letter, dated June 4, 1997, was sent to Pasco County with regard to Blanton Lake's 1996 regulatory assessment fees.

By letters dated May 6, 1996 and June 9, 1997, Pasco County notified the Commission of its position that, as receiver for Blanton Lake, the County was not responsible for payment of 1995 and 1996 regulatory assessment fees.

On June 19, 1997, Pasco County filed an application with this Commission for acknowledgment of the transfer of water and wastewater facilities from Blanton Lake Utilities Company to Pasco County, pursuant to Section 367.071, Florida Statutes. Pursuant to

DOCKET NO. 981344-WU
DATE: NOVEMBER 5, 1998

Order No. PSC-97-1424-FOF-WU, issued November 13, 1997, in Docket No. 970741-WU, the Commission acknowledged the transfer of Blanton Lake Utilities Company to Pasco County and canceled Certificate No. 328-W. Order No. PSC-97-1424-FOF-WU also recognized that regulatory assessment fees had been paid for Blanton Lake Utilities Company for 1994 through 1996 by Pasco County, and that Pasco County had submitted a request for waiver of penalties and interest due for 1996 regulatory assessment fees. The Order stated that the County's request for waiver, and the 1992 and 1993 regulatory assessment fees which went unpaid by Blanton Lake's former owner, would be handled in a separate docket.

This recommendation addresses staff's recommended disposition of the outstanding 1992 and 1993 regulatory assessment fees, and Pasco County's request for waiver of penalty and interest associated with Blanton Lake's regulatory assessment fees from January 1995 through June 1996.

DISCUSSION OF ISSUES

ISSUE 1: Should Mr. Stephen J. Matala, former owner of Blanton Lake Utilities Company, be ordered to show cause within 21 days why he should not remit regulatory assessment fees in the amount of \$713.08 for 1992 and 1993 as well as a statutory penalty in the amount of \$178.27 and interest in the amount of \$449.27, for violation of Sections 350.113 and 367.145, Florida Statutes and Rule 25-30.120, Florida Administrative Code, for failure to pay 1992 and 1993 regulatory assessment fees?

RECOMMENDATION: No. A show cause proceeding against Mr. Stephen J. Matala, former owner of Blanton Lake Utilities Company, should not be initiated. Staff further recommends that the Commission refer Blanton Lake's unpaid 1992 and 1993 regulatory assessment fees and associated penalties and interest to the State of Florida Comptroller's Office for permission to write off the account as uncollectible. (BRUBAKER, GROOM, KNIGHT)

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 1992 and 1993. Although the utility was abandoned by Mr. Stephen J. Matala in July of 1994 and operated by Pasco County since that time, Mr. Matala remains responsible for the 1992 and 1993 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.

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, June 15, 1993 and May 3, 1994. As of November 17, 1998, the utility owes the following: \$713.08 (\$356.81 for 1992 and \$356.27 for 1993) in regulatory assessment fees, as well as \$178.27 in penalties and \$449.27 in interest for a total of \$1,340.62. 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., 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.

On June 8, 1994, Mr. Matala notified this Commission of his intention to abandon the utility effective July 30, 1994. By Order No. PSC-94-0919-FOF-WU, issued July 26, 1994, we acknowledged the notice of abandonment. The Circuit Court appointed Pasco County Utility Department (Pasco County) the temporary receiver of Blanton Lake in September, 1994.

Nevertheless, pursuant to Section 367.071(2), Florida Statutes, Mr. Matala, the transferor, remains liable for, among other things, any outstanding regulatory assessment fees of the utility which were due and owing before he abandoned the utility. Although Mr. Matala remains liable for the 1992 and 1993 regulatory

DOCKET NO. 981344-WJ
DATE: NOVEMBER 5, 1998

assessment fees, we are unable to locate him. We sent letters on April 28, 1993, June 15, 1993 and May 3, 1994, and have received no response. We attempted to contact him at a telephone number which we had on file. Although the telephone number was in operation, there was no one by the name of Steven Matala at that number. Nor was Pasco County able to provide us with sufficient information to locate him.

Therefore, in consideration of the facts stated above, staff does not believe further collection efforts would be cost effective. Staff recommends that the Commission refer Blanton Lake unpaid regulatory assessment fees for 1992 and 1993 and associated penalty and interest to the Comptroller's Office for permission to write off the account as uncollectible.

This portion of the recommendation is consistent with Order No. PSC-98-1100-FOF-WS, issued August 17, 1998, in Dockets Nos. 900025-WS and 930944-WS; Order No. PSC-98-0663-FOF-WS, issued May 14, 1998, in Docket No. 980342-WS; and Order No. PSC-98-0906-FOF-SU, issued July 7, 1998, in Docket No. 980258-SU.

ISSUE 2: Should the Commission refer unpaid penalties and interest associated with Blanton Lake's 1995 through June 1996 regulatory assessment fees to the Office of the Comptroller?

RECOMMENDATION: Yes. The Commission should refer \$331.80 in unpaid penalties and interest to the Comptroller's Office for permission to write off the account. Accordingly, there is no need to rule on Pasco County's request, as receiver of Blanton Lake, for waiver of the penalty and interest. (BRUBAKER)

STAFF ANALYSIS: On August 1, 1994, Pasco County was appointed temporary receiver of Blanton Lake by the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida. Pursuant to Section 367.022(2), Florida Statutes, Pasco County could have immediately sought an exemption for operating the Blanton Lake facilities. Staff did make the County aware of the exemption statute by letter and telephone conversations with various County staff. Staff also sent the County a copy of an application for an exemption. For whatever reason, Pasco County never filed an application for an exemption. Therefore, the utility, with Pasco County as receiver, was regulated by the Commission until June 1996, when Section 367.022, Florida Statutes, became self-executing.

Blanton Lake with Pasco County as receiver, did not timely remit regulatory assessment fees for the January 1995 to June 1996 time period in accordance with Section 367.145, Florida Statutes. After the nonpayment of regulatory assessment fees was brought to staff's attention, staff contacted Pasco County about the outstanding regulatory assessment fees. By letter dated May 6, 1996, Pasco County stated its position that, as receiver for Blanton Lake, the County was not responsible for regulatory assessment fees. By letter dated June 9, 1997, Pasco County submitted a check in the amount of \$635.46 for outstanding regulatory assessment fees and requested a waiver of the penalty and interest.

The Commission is required to set a regulatory assessment fee that each utility must pay once a year in conjunction with filing its annual financial report required by Commission rule. Section 367.145(1), Florida Statutes. Rule 25-30.120(1), Florida Administrative Code, requires each utility to pay a regulatory assessment fee based upon its gross operating revenue. Beginning January 1, 1991, each utility is required to pay a fee in the amount of four and one-half percent for the entire year. Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(5)(a),

Florida Administrative Code, a penalty shall be assessed against any utility that fails to pay its regulatory assessment fee by March 31, in the following manner:

1. An assessment of 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 the failure continues, not to exceed a total penalty of 25 percent.
2. The amount of interest to be charged is 1% for each thirty days or fraction thereof, not to exceed a total of 12% per annum.

If the Commission were to consider the request for waiver of penalties and interest, the law as indicated above is clear that penalties and interest must be assessed to delinquent regulatory assessment fees. The law and prior Commission decisions are also clear that the Commission lacks the statutory authority to grant a waiver of the requirement to pay penalties and interest. See, Order No. PSC-96-0834-FOF-WS, issued July 1, 1996, in Docket No. 960540-WS, wherein the Commission construed the above provisions to bar waiver of regulatory assessment fees, penalties, and interest, but not to preclude a reasonable payment schedule to redress a utility's delinquency. See also, Order No. 24290, issued March 26, 1991 in Docket No. 900961-SU, wherein the Commission stated that it had no statutory authority to grant a waiver, and that Section 350.113(5), Florida Statutes, permitted a fee deadline to be extended 30 days for good cause shown. The Commission did, however permit the utility to submit a proposed payment schedule for its outstanding regulatory assessment fees, penalties, and interest. Also see, Order No. PSC-97-0767-FOF-FU, issued June 30, 1997 in Docket No. 970360-GU, June 30, 1997, wherein the Commission discussed its lack of authority to waive the statutory penalty and interest assessments on late regulatory assessment fee payments:

It is the function of the legislature and not the courts or administrative agencies to change the law. 1 Fla. Jur. 2d, Administrative Law, Section 32. The grant of a waiver of the regulatory assessment fee penalty statute, in the absence of any waiver provisions, express or implied, contained in the statute, would be a modification of the statute. This is a function reserved solely for the legislature. In addition, there is no basis for

interpretation of Section 350.113(4), F.S. The statute is clear and unambiguous on its face. If the terms and provisions of a statute are plain, there is no room for administrative interpretation. Southeastern Utilities Service Co. v. Redding, 131 So. 2d 1 (Fla. 1950).

Staff believes that a ruling on Pasco County's request is unnecessary. The utility itself is liable for the outstanding penalties and interest. The utility accumulated losses during the County's tenure and therefore lacked the funds to pay. Pasco County could not pay the penalties and interest out of the utility's funds and did not want to nor was required to use its own funds to pay the outstanding penalties and interest. Pasco County now operates the utility, however there are no excess funds within the utility to pay the fines. A ruling on the request for waiver would ultimately only result in the initiation of a show cause proceeding for the \$331.80 amount. Such action is not cost effective and collection of that amount is highly unlikely. In consideration of the foregoing, staff recommends that the Commission refer the unpaid penalties and interest to the Comptrollers Office for permission to write off the account. Staff's recommended action in this regard is consistent with Order No. PSC-98-1100-FOF-WS, issued August 17, 1998, in Dockets Nos. 900025-WS and 930944-WS; Order No. PSC-98-0663-FOF-WS, issued May 14, 1998, in Docket No. 980342-WS; and Order No. PSC-98-0906-FOF-SU, issued July 7, 1998, in Docket No. 980258-SU.

As discussed previously in this issue, Pasco County, as court-appointed receiver of Blanton Lake, was regulated by the Commission until June 1996, when Section 367.022, Florida Statutes, became self-executing. Whereas Blanton Lake, with Pasco County as court-appointed receiver, was exempt from Commission regulation since June 1996, no regulatory assessment fees should be assessed or owed from that period onward.

DOCKET NO. 981344-4
DATE: NOVEMBER 5, 1998

ISSUE 3: Should the 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.
(BRUBAKER, GROOM)

STAFF ANALYSIS: If the Commission approves Staff's recommendation, upon referral to the Comptroller's Office of the unpaid 1992 and 1993 regulatory assessment fees, and penalty and interest associated with Blanton Lake's 1995 and 1996 regulatory assessment fees, no further action will be required, and this docket should be closed.