



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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RECORDS AND REPORTING

**DATE:** JANUARY 7, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (FERGUSON<sup>GF</sup> BRUBAKER)<sup>JSB</sup>  
 DIVISION OF ADMINISTRATION (SEWELL, KNIGHT)<sup>J</sup>  
 DIVISION OF WATER AND WASTEWATER (T.L. DAVIS, REDEMANN)<sup>SSM</sup>

**RE:** DOCKET NO. 980678-WU - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST GEM ESTATES UTILITIES, INC., IN PASCO COUNTY FOR VIOLATION OF RULE 25-30.110(3), F.A.C., ANNUAL REPORT, AND RULE 25-30.120, F.A.C., REGULATORY ASSESSMENT FEES.  
 COUNTY: PASCO

**AGENDA:** JANUARY 19, 1999 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\980678AO.RCM

### CASE BACKGROUND

Gem Estates Utilities, Inc., (Gem Estates or utility) is a Class C water utility operating in Pasco County. Gem Estates provides water service to 215 customers in a mobile home subdivision in Pasco County. In its 1994 annual report, the utility reported water operating revenues of \$12,152 and operating expenses of \$19,887, resulting in a net loss of \$7,735.

This utility has neither filed its annual reports from 1995 to 1997 nor remitted regulatory assessment fees for the same period. The utility also owes penalties and interest for 1992 and 1993 for not timely remitting regulatory assessment fees.

DOCUMENT NUMBER-DATE

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PSC-RECORDS/REPORTING

By Order No. PSC-98-0905-SC-WU, on July 7, 1998, the Commission ordered that Gem Estates show cause, in writing, within 20 days of the order, why it should not remit a penalty in the amount of \$3,888 (\$2,331 for 777 days x \$3.00 per day for 1995; \$1,326 for 442 days x \$3.00 for 1996; \$ 231 for 77 days x \$3.00 for 1997) for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its annual reports from 1995 to 1997 and \$399.28 (\$139.50 for 1995; \$142.97 for 1996; \$116.81 for 1997) and interest in the amount of \$271.10 (\$156.24 for 1995; \$91.50 for 1996; \$23.36 for 1997) for violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, for failure to remit regulatory assessment fees. The utility was also ordered to show cause, in writing, within 20 days of the order, why it should not remit a statutory penalty and interest of \$12.38 for failure to timely remit 1992 and 1993 regulatory assessment fees. Further, Gem Estates was ordered to immediately remit \$1,713.96 (\$558 for 1995, \$571.89 for 1996; and \$584.07 for 1997) in regulatory assessment fees. Gem Estates failed to file a response to the show cause order; thus, the penalties were deemed assessed. The Commission determined that if Gem Estates failed to respond to reasonable collection efforts by Commission staff, the collection of penalties would be referred to the Department of Banking and Finance Office of the Comptroller (Comptroller's office) for further collection efforts.

Commission staff sent two collection letters on August 26, 1998 and September 9, 1998. Pursuant to the Commission's Order, staff began to prepare to transfer this matter to the Comptroller's office for further Collection efforts.

Recently, Commission staff prepared to visit the utility to investigate a complaint regarding a disruption in water service and general customer dissatisfaction. Commission staff then learned that the Florida Department of Environmental Protection (DEP) has been investigating complaints by customers of the utility for the past two years. According to DEP staff, Gem Estates' electric utilities have been disconnected on three occasions, with the most recent disconnection occurring during the week of December 21, 1998. The Gem Estates Homeowner's Association (Homeowner's Association) has paid the utility's electric bill on the last two occasions in order to continue to receive water service.

Ms. Jacqueline Cahill, president of Gem Estates, has consistently refused certified Commission correspondence (letters dated April 9, 1996, July 26, 1996, July 28, 1997, November 26, 1997, January 5, 1998, May 12, 1998, August 26, 1998 and September 9, 1998). Commission staff attempted to send correspondence to Ms.

Cahill by first class mail and never received a reply. According to DEP staff, Ms. Cahill never responded to Pasco County Department of Health correspondence. Ms. Cahill stopped communicating with the utility operator Suncoast, Inc., and has recently refused to pay the operator as well. Ms. Cahill has not responded to DEP's correspondence, and DEP's attempts to serve her with process for outstanding notices of violation (NOV). DEP was successful with service of process on the last NOV due to the recent disruption of service and filed a petition for an emergency injunction against Ms. Cahill's operation of the utility in circuit court on January 5, 1999. As a part of DEP's prayer for relief, DEP moved the court to find a constructive abandonment of the utility by Ms. Cahill and appoint the Homeowners Association as receiver or order a forced sale of the utility. Because the matter will be set for hearing soon after this Agenda Conference, this recommendation addresses whether the Commission should modify its previous order to secure its interest in the proceeds of a potential forced abandonment or sale of the utility.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission modify Order No. PSC-98-0905-SU-WU and order that outstanding regulatory assessment fees, penalties, and interest be a lien on the real and personal property of the utility and its directors?

**RECOMMENDATION:** Yes. Staff recommends that Order No. PSC-98-0905-SC-WU be modified and that pursuant to Section 367.161, Florida Statutes, the penalty for delinquent annual reports and regulatory assessment fees set forth in that Order be a lien on the real and personal property of the utility, enforceable by the Commission as a statutory lien under Chapter 85, Florida Statutes. Pursuant to Chapter 85, the proceeds of such lien should be deposited by the Commission in the General Revenue Fund Unallocated Account.

Further, Staff recommends that Order No. PSC-98-0905-SU-WU be modified so that delinquent regulatory assessment fees be recorded as a lien on the real and personal property of the utility and its directors, and should be enforceable as a lien upon being duly recorded with the Clerk of the County Court in Pasco County pursuant to Section 55.10, Florida Statutes. The Commission should provide notice to the utility and its directors of such lien pursuant to Section 55.10, Florida Statutes. The Commission should pursue collection efforts as appropriate pursuant to Section 69.041, Florida Statutes. The proceeds of such lien should be



deposited in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. (FERGUSON)

**STAFF ANALYSIS:** As stated in the case background, Jacqueline Cahill, president of the utility, failed to respond to numerous attempts by the Commission staff to communicate with her regarding the delinquent annual reports for 1995 to 1997 including: \$3,888 (\$2,331 for 777 days x \$3.00 per day for 1995; \$1,326 for 442 days x \$3.00 for 1996; \$ 231 for 77 days x \$3.00 for 1997) in penalties; delinquent regulatory assessment fees of \$1,713.96 (\$558 for 1995, \$571.89 for 1996; and \$584.07 for 1997) for those same years; penalties of \$399.28 (\$139.50 for 1995; \$142.97 for 1996; \$116.81 for 1997) and interest in the amount of \$271.10 (\$156.24 for 1995; \$91.50 for 1996; \$23.36 for 1997) for failure to remit those regulatory assessment fees, as well as penalty and interest of \$12.38 for failure to timely remit 1992 and 1993 regulatory assessment fees. Because Ms. Cahill failed to respond to Order No. PSC-98-0905-SC-WU, the penalties were deemed assessed. By that same order, the Commission determined that if Ms. Cahill did not respond to reasonable collection efforts, then this matter would be forwarded to the Comptroller's Office for further collection efforts.

During this same time, DEP issued three NOV's for failing to maintain electricity to operate the utility. According to DEP staff, Ms. Cahill has all but abandoned the operations of the utility, with the utility operator managing the utility without being compensated and the Homeowners Association remitting the last two payments for the utility's electricity bills. DEP then issued its final NOV for the latest disruption of service and for failing to respond to previous NOV's and successfully served Ms. Cahill. DEP moved for an emergency injunction, officially blocking Ms. Cahill from operating the utility and moved that the Circuit Court of Pasco County find a constructive abandonment of the utility by Ms. Cahill and order a forced sale of the system. That hearing is pending.

Staff believes that no amount of communication from the Commission or other entities will force Ms. Cahill into compliance. Therefore, staff recommends that Order No. PSC-98-0905-SU-WU be modified and that pursuant to Section 367.161, Florida Statutes, the penalty for delinquent annual reports and regulatory assessment fees set forth in that Order: \$4,558.38 (\$2,331 for 777 days x \$3.00 per day for 1995; \$1,326 for 442 days x \$3.00 for 1996; \$231 for 77 days x \$3.00 for 1997; \$12.38 penalty and interest for 1992 and 1993; \$139.50 penalty for 1995; \$142.97 penalty for 1996; \$116.81 penalty for 1997 and interest in the amount of \$156.24 for

1995; \$91.50 for 1996; \$23.36 for 1997), be a lien on the real and personal property of the utility, enforceable by the Commission as a statutory lien under Chapter 85, Florida Statutes. The proceeds of such lien shall be deposited by the Commission in the General Revenue Fund Unallocated Account.

Further, Staff recommends that Order No. PSC-98-0905-SU-WU be modified so that delinquent regulatory assessment fees in the amount of: \$1,713.96 (\$558 for 1995, \$571.89 for 1996; and \$584.07 for 1997) be recorded as a lien on the real and personal property of the utility and its directors, and should be enforceable as a lien upon being duly recorded with the Clerk of the County Court in Pasco County pursuant to Section 55.10, Florida Statutes. The Commission should provide notice to the utility and its directors of such lien pursuant to Section 55.10, Florida Statutes. The Commission should pursue collection efforts as appropriate pursuant to Section 69.041, Florida Statutes. The proceeds of such lien should be deposited in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. The total amount of the liens would be \$6,284.72.

This recommendation is consistent with Order No. PSC-98-1005-SC-WU, issued in Docket No. 980729-WU, Initiation of show cause proceedings against A. P. Utilities, Inc., for violation of Rule 25-30.110, F.A.C. Annual Reports, and Rule 25-30.120, F.A.C., Regulatory Assessment Fees, on July 24, 1998.

DOCKET NO. 980678 JU  
DATE: JANUARY 7, 1998

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes, once the Commission's modifying order has been appropriately filed with the Clerk of the County Court of Pasco County and the liens recorded, this docket should be closed administratively. (FERGUSON)

**STAFF ANALYSIS:** Once the Commission's modifying order has been appropriately filed with the Clerk of the County Court of Pasco County and the liens recorded, this docket should be closed administratively.