



Public Service Commission

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DATE: AUGUST 26, 1999

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

FROM: DIVISION OF WATER AND WASTEWATER (CLAPP, REDEMANN)
DIVISION OF LEGAL SERVICES (VACCARO)

RE: DOCKET NO. 981030-WU - APPLICATION FOR TRANSFER OF PORTION OF CERTIFICATE NO. 380-W IN MARION COUNTY FROM A. P. UTILITIES, INC. TO OCALA OAKS UTILITIES, INC.

DOCKET NO. 981029-WU - APPLICATION BY OCALA OAKS UTILITIES, INC. FOR LIMITED PROCEEDING TO IMPOSE CURRENT WATER RATES, CHARGES, CLASSIFICATIONS, RULES, REGULATIONS, AND SERVICE AVAILABILITY POLICIES ON HAWKS POINT AND 49TH STREET VILLAGE CUSTOMERS THAT ARE CURRENTLY SERVED BY A. P. UTILITIES, INC. IN MARION COUNTY.

COUNTY: MARION

AGENDA: SEPTEMBER 7, 1999 - REGULAR AGENDA - PROPOSED AGENCY ACTION ISSUES NOS. 2, 3, and 4 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\981030WU.RCM

CASE BACKGROUND

A. P. Utilities, Inc. (APU, seller, or utility), is a Class B utility serving approximately 1,200 residential customers in Marion County. Certificate No. 380-W was transferred to A. P. Utilities, Inc., in Docket No. 881603-WU pursuant to Order No. 21762, issued August 21, 1989. The utility's 1997 annual report on file with the Commission lists annual revenues of \$219,215 and operating expenses of \$200,051, resulting in net operating income of \$19,164.

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FPSC-RECORDS/REPORTING

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By Order No. 21762, issued August 21, 1989, in Docket No. 881603-WU, the Commission granted a transfer of Certificate No. 380-W from North Central Florida Utilities, Inc. to APU. On November 30, 1990, Mr. Philip Woods purchased the assets of APU from Mr. Michael Blake, and by Order No. 24977, issued August 26, 1991 in Docket No. 910117-WU, the Commission approved the transfer of majority organizational control. The purchase also included the Aqua Pure Water Company (Aqua Pure) and Marico Properties, Inc. (Marico). By Order No. 25063, issued September 13, 1991, in Docket No. 910119-WU, the Commission approved the transfer of assets from Marico to APU, and by Order No. 25075, issued September 17, 1991, in Docket No. 910118-WU, the Commission approved the transfer of assets from Aqua Pure to APU.

Since the transfer of assets of APU to Philip Woods, the utility has failed to correct deficiencies in its 1993 annual report, failed to timely file its 1994, 1995, 1996 and 1997 annual reports, failed to file its 1998 annual report, and failed to pay its regulatory assessment fees (RAFTs) for each of the years 1991 through 1998. Therefore, on numerous occasions, the Commission has ordered the utility to show cause for failure to pay RAFTs and file/correct deficiencies to annual reports.

For example, by Order No. PSC-98-1005-SC-WU, issued July 24, 1998, in Dockets Nos. 980729-WU and 971504-WU, APU was ordered to show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$3,037.50 for failure to correct deficiencies in its 1996 annual report, and why it should not remit a penalty of \$2,198.49 and interest in the amount of \$439.70 for failure to remit 1997 RAFTs. In addition, the order required APU to immediately remit \$10,992.47 in delinquent RAFTs for 1997. APU failed to file a timely response to this order to show cause, and the penalties and interest set forth in that order were recorded as a statutory lien pursuant to Chapter 85, Florida Statutes, on the real and personal property of A.P. Utilities, Inc., and its directors, Philip and Joan Woods. Further, pursuant to Section 55.10, Florida Statutes, that same order was recorded as a lien on the real and personal property of A.P. Utilities, Inc., and its directors, for the amount of the utility's delinquent regulatory assessment fees being duly recorded with the Clerk of the County Court in Marion County, Florida. The liens total \$16,668.16 (RAFTs: \$10,992.47; penalty and interest: \$5,675.69).

The utility was also investigated for potential overearnings. By Order No. PSC-98-0044-PCO-WU, issued January 6, 1998, in Docket No. 971504-WU, the Commission initiated an investigation into APU's rates and charges for potential overearnings. By that order, the

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Commission required APU to hold its revenues subject to refund pending the Commission's investigation of the utility's possible overearnings, and provide security in the form of a bond, letter of credit or escrow agreement to guarantee any potential refund of its revenues.

Mr. Woods informed staff that he was interested in leaving the utility business. He had a pending contract to transfer two of the APU systems, 49th Street and Hawks Point, to Ocala Oaks and he was in negotiations with Marion County for the sale of three other systems, Raven Hill, South Oak, and Peppertree. The sixth and final system, Quail Run, was not included in either sale.

Before the Commission could consider any applications for transfer of systems from APU, the utility's outstanding RAFs, penalties, interest and annual report penalties, as well as potential overearnings, had to be addressed. By Order No. PSC-99-1459-PAA-WU, issued July 27, 1999, in Docket No. 971504-WU, the Commission approved a settlement offer from Mr. Woods, which resolved all outstanding RAF payments, associated penalties and interest and penalties for failure to file/correct deficiencies to annual reports. By that order, the Commission also approved the release of the overearnings escrow account to apply funds in that account toward payment of past RAF and annual report liabilities. The settlement requires certain payment from the proceeds of the sale of APU to Ocala Oaks, which will be addressed in Issue No. 1 of this recommendation.

On August 14, 1998, APU submitted an application for transfer of two of its six water systems to Ocala Oaks Utilities, Inc., (Ocala Oaks or buyer), holder of Certificate No. 346-W. Ocala Oaks is a Class B utility, serving approximately 1,409 residential customers in Marion County. The utility's 1998 annual report on file with the Commission lists annual revenue of \$376,252 and operating expenses of \$282,280, resulting in a net operating income of \$26,659. The two water systems to be transferred are 49th Street Village Water System with 98 customers and Hawk's Point Water System with 124 customers. A special clause to the contract for purchase of the two systems is that the contract is contingent upon the Commission authorizing the buyer to levy its current rates and charges on the two acquired systems.

On August 14, 1998, Ocala Oaks submitted an application for limited proceeding to impose its current water rates, charges, classifications, rules and regulations, and service availability policies on the two transferred systems. Since the sale is

contingent on this application being approved by the Commission, both dockets are being considered together.

A customer meeting was held between the two service areas in Ocala, Florida, on November 4, 1998. A total of fifteen customers attended the meeting, with one from the 49th Street system and fourteen from the Hawks Point system.

The purpose of this docket is to approve the transfer of two systems from APU to Ocala Oaks, approve the imposition of Ocala Oaks' current water rates, charges, classifications, rules and regulations, and service availability policies on the two transferred systems, amend Water Certificate No. 380-W to remove the two systems, and to amend Water Certificate No. 346-W to include the two systems.

DISCUSSION OF ISSUES

ISSUE 1: Should the transfer of a portion of Certificate No. 380-W from A. P. Utilities, Inc., to Ocala Oaks Utilities, Inc., holder of Certificate No. 346-W, be approved?

RECOMMENDATION: Yes, the transfer of a portion of Certificate No. 380-W from A. P. Utilities, Inc., to Ocala Oaks Utilities, Inc., holder of Certificate No. 346-W, should be approved and Certificate Nos. 380-W and 346-W should be amended to reflect the transfer. From the proceeds of the sale of APU's systems to Ocala Oaks, \$2,473.75 should be applied toward payment of the liens on APU's and Mr. and Mrs. Woods' property. Additionally, the transfer should be approved contingent upon receipt of written confirmation of the sale, which should be submitted within 60 days of the closing, and satisfaction of the liens within 30 days of the order. (CLAPP, REDEMANN)

STAFF ANALYSIS: As stated in the case background, APU applied for a transfer of two of its water systems, 49th Street Village Water System and Hawk's Point Water System, under Water Certificate No. 380-W in Marion County to Ocala Oaks Utilities, Inc., on August 14, 1998. The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for transfer. The application contains a check in the amount of \$750, which is the

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correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence, in the form of a Warranty Deed, that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.037(2)(q), Florida Administrative Code.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. No objections to the application were received, and the time for the filing of such objections has expired. A description of the territory being transferred is appended to this memorandum as Attachment A.

The application contained a statement of how the transfer would be in the public interest, pursuant to Rule 25-30.037(j), Florida Administrative Code. The statement provides that the transfer is in the public interest because APU desires to no longer be in the water business. It also provides that Ocala Oaks has been in existence since 1977 and certificated since December 23, 1981, and has the financial ability to provide service to these systems as demonstrated in its annual reports. Staff believes that the buyer has demonstrated the overall financial and technical ability to insure the continued operations of the two water systems.

Staff has contacted the Department of Environmental Protection (DEP) and has learned that there are no outstanding notices of violation against the utility.

The application contains a copy of the contract for sale which includes the purchase price, terms of payment and a list of the assets purchased and liabilities assumed. Based on the application, there are no guaranteed revenue contracts or customer advances. The seller will remain responsible for the existing debts of the utility with the exception of an existing mortgage in the amount of approximately \$97,122 which the buyer will assume. The buyer has agreed to be responsible for payment of the 1999 RAFs. The buyer should provide written confirmation of the transfer closing, which should be submitted to the Commission within 60 days of the closing.

No customer deposits will be transferred to the buyer since the seller refunded them to the customers of these two systems in September and October, 1998. Ocala Oaks has provided a statement that it will fulfill the commitments, obligations, and representations of the seller. Additionally, the buyer has stated

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that it will maintain and operate the system in compliance with the appropriate laws and rules.

As stated in the case background, APU developed an extensive history of unfiled annual reports and unpaid RAFs, which lead to penalties and interest being assessed against the utility. In addition, liens totaling \$16,668.16 were filed on the utility's and Mr. and Mrs. Woods' properties based upon the utility's failure to pay 1997 RAFs and for failure to correct deficiencies to its 1996 annual report. On July 6, 1999, the Commission approved a settlement offer from Mr. Woods. Pursuant to Order No. PSC-99-1459-PAA-WU, the Commission approved the release of APU's overearnings escrow account to be applied toward payment of the aforementioned liens. That escrow account totals \$14,194.41. The settlement order also provided that proceeds from the sale to Ocala Oaks shall be applied to the outstanding balance owed for the liens.

Subtracting the escrow funds from the liens leaves an outstanding balance of \$2,473.75. The purchase price of \$103,561.05 less mortgage assumed by the buyer of approximately \$97,122.10, leaves proceeds of the sale in the amount of approximately \$6,428.95. Therefore, staff recommends that \$2,473.75 from the proceeds of the sale of APU's systems to Ocala Oaks be applied toward payment of the liens on APU's and Mr. and Mrs. Woods' property. Upon satisfaction of these liens, APU's outstanding RAF and annual report penalty balance will total \$34,584.89, which, pursuant to the Commission's settlement order, will be paid from an upcoming sale of additional APU systems to Marion County. An application for transfer of APU systems to Marion County will be docketed in the near future.

Based on the above, staff recommends that the transfer of assets and facilities from A. P. Utilities, Inc., to Ocala Oaks Utilities, Inc., the amendment of Water Certificate No. 380-W to remove the two transferred systems, and the amendment of Water Certificate No. 346-W to add the two transferred systems, is in the public interest. The transfer should be approved contingent upon receipt of written confirmation of the sale, which should be submitted within 60 days of the closing, and satisfaction of the liens within 30 days of the order.

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ATTACHMENT A

OCALA OAKS UTILITIES, INC.

WATER SERVICE AREA

MARION COUNTY

HAWKS POINT SUBDIVISION

The SE 1/4 of Section 26, Township 16 South, Range 22 East, Marion County, Florida: Less and Except the East 12 ½ chains thereof, and Less the North 10 chains thereof: and Except the West ½ of the SW 1/4 of the SE 1/4, and Except the SE 1/4 of the SW 1/4 of the SE 1/4, Except the East 30 feet.

THE SUBDIVISIONS OF 49TH STREET VILLAGE, STONEGATE AND COUNTRY ROADS

The following described lands located in portions of Sections 27 and 34, Township 14 South, Range 22 East, Marion County, Florida:

Section 27

The South ½ of the SW 1/4 of the SW 1/4

Section 34

The North 1/4 of the NW 1/4
The SW 1/4 of the NE 1/4 of the NW 1/4

ISSUE 2: What is the rate base of the two systems at the time of transfer?

RECOMMENDATION: The rate base of the two water systems, which for transfer purposes reflects the net book value, is \$131,360. Moreover, APU should be required to establish its books and records for the Quail Run system in compliance with the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA), if APU does not have a contract pending for the system by December 31, 1999. (CLAPP, REDEMANN)

STAFF ANALYSIS: According to the application, the net book value of the two systems being transferred as of the date of the application was \$108,263. Ocala Oaks proposed a rate base for Hawks Point of \$69,814 based upon Docket No. 881603-WU and for 49th Street of \$38,449, based upon Docket No. 910116-WU. The rate base for 49th Street was established based upon an original cost study performed by staff. However, the application failed to subtract the \$7,000 land value from the rate base before calculating for current value. In making this correction, the current rate base for 49th Street is \$39,674. Also, the rate base for Hawks Point was established based upon information which was subsequently believed to be unreliable. Therefore, staff performed an original cost study in September 1998. The rate base determined for Hawks Point was \$91,686.

A reliable audit could not be performed on the books and records of APU due to the fact that it failed to maintain them in compliance with the 1994 NARUC USOA, as required by Rules 25-30.115, Florida Administrative Code. Since the owner is in the process of selling the systems that make up APU, staff is not recommending that the utility maintain its records as required by Rules 25-30.115, F.A.C. However, since APU does not have a buyer identified for the Quail Run system, staff is recommending that APU should be required to establish its books and records in compliance with the NARUC USOA, if APU does not have a contract pending for the system by December 31, 1999.

Staff recommends that rate base for transfer purposes should be \$39,674 for 49th Street and \$91,686 for Hawks Point for a total of \$136,135, as shown on Schedule No. 1. A synopsis of the staff adjustments is shown on Schedule No. 2. This rate base calculation is used purely to establish the 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.

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SCHEDULE NO. 1

49TH STREET AND HAWKS POINT
SCHEDULE OF WATER SYSTEMS RATE BASE
AS OF SEPTEMBER, 1998

<u>DESCRIPTION</u>	<u>BALANCE PER</u> <u>APPLICANT</u>	<u>STAFF</u> <u>ADJUSTMENTS</u>	<u>BALANCE PER</u> <u>STAFF</u>
Utility Plant in Service			
49th Street	\$75,641	(\$7,000) (1)	\$68,641
Hawks Point	117,598	23,964 (2)	141,562
Land			
49th Street	0	\$7,000 (3)	\$7,000
Hawks Point	0	6,000 (4)	6,000
Accumulated Depreciation			
49th Street	(13,237)	1,225 (5)	(12,012)
Hawks Point	(23,759)	(8,092) (6)	(31,851)
Contributions-in- aid-of-Construction			
49th Street	(29,036)	0	(29,036)
Hawks Point	(31,000)	0	(31,000)
Amortization of Accumulated CIAC			
49th Street	5,081	0	5,081
Hawks Point	<u>6,975</u>	<u>0</u>	<u>6,975</u>
 TOTAL	 <u>\$108,263</u>	 <u>\$23,097</u>	 <u>\$131,360</u>

SCHEDULE 2

49TH STREET AND HAWKS POINT

SCHEDULE OF WATER SYSTEMS RATE BASE ADJUSTMENTS

(Numbers in parentheses refer to Staff Adjustments on Schedule 1)

EXPLANATION	ADJUSTMENT
Utility Plant in Service	
1. 49th Street - Land value deducted(1)	(\$7,000)
2. Hawks Point - New original cost study(2)	<u>23,964</u>
Total	16,964
Land	
1. 49th Street - Land value added(3)	7,000
2. Hawks Point - Land value added(4)	<u>6,000</u>
Total	13,000
Accumulated Depreciation	
1. 49th Street - Removed depreciated land value(5)	1,225
2. Hawks Point - Adjusted for new original cost study(6)	<u>(8,092)</u>
Total	(6,867)
TOTAL ADJUSTMENT	<u>\$23,097</u>

ISSUE 3: Should an acquisition adjustment be approved?

RECOMMENDATION: No, an acquisition adjustment should not be approved. (CLAPP)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. The acquisition adjustment resulting from the transfer would be calculated as follows:

Purchase Price	\$103,561
Staff calculated rate base	<u>\$131,360</u>
Negative Acquisition adjustment	<u>\$ 27,799</u>

In the absence of extraordinary circumstances, it has been Commission policy that a subsequent purchase of a utility system at a premium or discount shall not affect the rate base calculation. The circumstances in this exchange do not appear to be extraordinary; therefore, a negative acquisition adjustment should not be included in the calculation of rate base. Also, an acquisition adjustment was not requested by the applicant. The seller wants to leave the utility business and the buyer is assuming great debt owed by the seller. Therefore, staff recommends that no acquisition adjustment be approved in this docket.

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ISSUE 4: Should Ocala Oaks' request to implement its rates and charges, classifications, rules and regulations, and service availability policies pursuant to a limited proceeding be approved?

RECOMMENDATION: Yes, Ocala Oaks' request to implement its rates and charges, classifications, rules and regulations, and service availability policies to the customers of 49th Street and Hawks Point customers should be approved. Ocala Oaks should be required to file tariff sheets consistent with the Commission's decision within thirty days of the transfer if no timely protests are received. The tariff should be effective for services provided or connections made on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code, provided the customers have received notice. (CLAPP)

STAFF ANALYSIS: Ocala Oaks' approved rates were effective November 27, 1998, pursuant to a price index for 1998 and pass-through of ad valorem taxes. Service availability charges were effective August 6, 1996, pursuant to an application for rate increase filed in Docket No. 960408-WU.

On August 14, 1998, Ocala Oaks submitted an application for limited proceeding to impose its current water rates, charges, classifications, rules and regulations, and service availability policies on the two transferred systems. Enclosed with the request was a check in the amount of \$500 pursuant to Sections 367.0822 and 367.145, Florida Statutes, and Rule 25-30.020, Florida Administrative Code.

Rule 25-9.044(1), Florida Administrative Code, provides that:

In cases of change of ownership or control of a utility which places the operation under a different or new utility... the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission)....

Ocala Oaks has requested through the limited proceeding process that the rates of the 49th Street and Hawks Point systems be changed to those approved for the other systems it owns in Marion County.

The rates for 49th Street and Hawks Point were effective pursuant to Order No. 24977, issued February 11, 1992. Since these rates have not been adjusted in over seven years, they are

artificially low and non-reflective of rates needed to keep a business running properly. In fact, as stated in the case background, Mr. Woods did not pay any RAFs until 1998, when he decided to leave the utility business. According to the January 1, 1999 Comparative Cost Statistics, these rates are very low for the county, with only three out of fourteen water-only utilities having rates lower than APU's.

Ocala Oaks provided information in support of its request to increase the 49th Street and Hawks Point rates to those of Ocala Oaks. A projection of the revenue increase which would be necessary to support the two systems on a "stand alone" basis with positive earnings indicates that rates would be higher than the proposed Ocala Oaks rates. Staff projects a 400% increase in revenue in order to put the two systems on a stand-alone make-whole basis. Staff would like to point out that the revenue requirement used for calculating stand alone rates is an estimate of personnel and general operating expenses. Calculating the "true" revenue requirement for the stand alone systems would entail the filing of a rate case. A comparison of the rates of APU, Ocala Oaks, and a stand alone utility is provided in Schedule No. 3.

A total of fifteen customers attended the November 4, 1998, meeting, with one from the 49th Street system and fourteen from the Hawks Point system. Seven customers made sworn presentations. Many of the customers indicated that they were on fixed incomes and would have trouble paying higher bills. The customers believed they received adequate service from APU; however, as the discussion proceeded, several customers expressed concern about sediment in the water, varying quality of the water and low water pressure. The customers were informed about the buyer's intent to replace the Hawks Point generator and to work on the water pressure issue as initial areas of concentration upon the transfer of the two systems.

An increase in rates is always a concern of the Commission; however, staff does not believe there are many reliable options for the two systems. The current owner wants to leave the utility business, so no change is not an option. Maintaining the systems as stand-alone utilities would potentially result in much higher rates to the customers than those of Ocala Oaks. If the transfer to Ocala Oaks is approved, the two systems will be acquired by a larger, financially secure and operationally sound utility. Also, Ocala Oaks will have a more stable and diverse customer base and, through economies of scale, be better able to soften future rate shock in the long run, as opposed to maintaining the systems as stand-alone utilities.

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Based on the reasons stated above, staff recommends that the request of Ocala Oaks to implement its rates and charges, classifications, rules, regulations and service availability policies on the 49th Street and Hawks Point water systems be approved. Ocala Oaks should be required to file tariff sheets consistent with the Commission's decision within thirty days of the transfer if no timely protests are received. The tariff should be effective for services provided or connections made on or after the stamped approval date, in accordance with Rule 25-30.475, Florida Administrative Code, provided the customers have received notice.

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SCHEDULE NO. 3

49TH STREET AND HAWKS POINT
SCHEDULE OF SAMPLE WATER BILLS
AS OF SEPTEMBER, 1998

<u>DESCRIPTION</u>	<u>EXISTING AP RATES</u>	<u>PSC ESTIMATED STAND ALONE</u>	<u>EXISTING OCALA OAKS</u>
5/8x3/4" Base Facility Charge	\$5.67	\$28.31	\$13.11
Gallonage Charge	\$1.06/1,000	\$1.06/1,000	\$1.12/1,000
Monthly Bill at			
6,000 Gallons	\$12.73	\$34.67	\$19.83
7,600 Gallons	13.73	36.36	21.62
8,000 Gallons	14.15	36.79	22.07

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open for an additional three months to allow staff to verify that Ocala Oaks has submitted proof of the closing and needed tariff sheets. If no timely protest is received to the proposed agency action issues, upon expiration of the protest period, the order should become final and effective upon the issuance of a consummating order. Once proof of the closing has been submitted, the docket should be closed administratively. (VACCARO)

STAFF ANALYSIS: This docket should remain open for an additional three months to allow staff to verify that Ocala Oaks has submitted proof of the closing and needed tariff sheets. If no timely protest is received to the proposed agency action issues, upon expiration of the protest period, the order should become final and effective upon the issuance of a consummating order. Once proof of the closing has been submitted, the docket should be closed administratively.