

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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DATE: NOVEMBER 16, 2000

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

FROM: DIVISION OF ECONOMIC REGULATION (TLDAVIS, KAPROTH)
DIVISION OF LEGAL SERVICES (FUDGE)
DIVISION OF ADMINISTRATION (SEWELL)

JLDavis *KK* *DM* *RTT* *192*

RE: DOCKET NO. 001613-WS - DISPOSITION OF DELINQUENT REGULATORY ASSESSMENT FEES FOR BONITA CENTER TREATMENT PLANT, INC; EASTDESTIN WASTEWATER SERVICE, INC.; EAST NAPLES SEWER TREATMENT CORP.; GREEN ACRES ESTATES; HERITAGE WOOD `N LAKES ESTATES, A DIVISION OF SUNSHINE STATES CORP.; NAPLES SEWER COMPANY; OCEAN CITY UTILITIES, INC.; SOUTHEASTERN STATES UTILITIES, INC.; AND SPRINGS PLAZA SEWER SYSTEM, INC., ALL COMPANIES NO LONGER SUBJECT TO FLORIDA PUBLIC SERVICE COMMISSION JURISDICTION.

COUNTIES: LEE, OKALOOSA, COLLIER, VOLUSIA, SUMTER, COLLIER, FLAGLER, PALM BEACH, LEE

AGENDA: 11/28/2000 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\00613.RCM

CASE BACKGROUND

All utilities regulated by the Florida Public Service Commission (Commission) are required by Rule 25-30.120, Florida Administrative Code, to pay regulatory assessment fees (RAFs) by March 31 for the preceding year ended December 31. Most utilities comply with this requirement. There is a small percentage (3%) of utilities, usually Class C, which do not pay their RAFs each year. Often these utilities are bought by larger utilities, acquired by

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governmental entities, abandoned, or they become exempt. The transfer of these utilities makes it difficult for the Commission to track, let alone collect, the delinquent RAFs. Several attempts have been made to collect the delinquent RAFs owed by the utilities discussed in this recommendation. Staff believes that any further attempts to collect would be futile because in these instances, the utilities' corporate entities no longer exist. Further, staff has exhausted its attempts to collect the delinquent RAFs from these utilities that are no longer regulated by the Commission.

What follows is a history of the utilities and the attempts that have been made to collect the delinquent RAFs. Generally, RAFs were calculated based on the annual report for the year RAFs were due. Revenues reported were multiplied by the applicable RAF rate. Staff notes that by Order No. 22384, issued January 8, 1990, in Docket No. 891204-WS, the Commission held that the RAF rate of 2.5% would apply during the first half of 1990 and that 4.5% would apply for the second half of 1990 and the following years. If a utility did not have an annual report on file for the year RAFs were due, then the revenues and resulting RAFs were estimated based on a prior year annual report or, if a utility did not have a prior year annual report on file, then the applicable minimum annual RAF of \$25 for water, and \$25 for wastewater was assessed. See Rule 25-30.120(1), Florida Administrative Code. For the years 1991 through 1995, staff calculated the penalties and interest, in accordance with Rule 25-30.120(7)(a), Florida Administrative Code, based on the number of days that have elapsed since the respective RAFs were due and the date of this agenda conference. The RAF, penalties and interest each utility owes by year is detailed in Attachment A. Although these utilities are no longer regulated by the Commission, the Commission maintains jurisdiction to pursue collection efforts of the delinquent RAFs pursuant to Sections 367.071(2), 367.145, and 367.171(5).

DISCUSSION OF ISSUES

ISSUE 1: Should the utilities identified in the staff analysis be ordered to show cause, in writing, within 21 days, why they should not remit RAFs, statutory penalties, and interest in their respective amounts for their apparent violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, for failure to pay delinquent RAFs?

RECOMMENDATION: No. Show cause proceedings should not be initiated. Staff further recommends that the Commission refer the utilities' unpaid RAFs and associated penalties and interest to the State Comptroller's Office, Department of Banking and Finance, for permission to write off the accounts as uncollectible, in the amounts identified in the staff analysis. (FUDGE, TLDAVIS, KAPROTH, SEWELL)

STAFF ANALYSIS: In establishing rates, the Commission includes in its determination of the revenue requirements the utility's obligation to pay RAFs. However, the following utilities failed to pay RAFs for numerous years, some dating back to 1990: Bonita Center Treatment Plant, Eastdestin Wastewater Service, Inc., East Naples Sewer Treatment Corp., Green Acres Estates, Heritage Wood N' Lake Estates, a Division of Sunshine State Corp., Naples Sewer Company, Ocean City Utilities, Inc., Southeastern States Utilities, and Springs Plaza Sewer System. Although these utilities have been transferred to other utilities or governmental entities, the delinquent utilities remain 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(7)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. 5% 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%.
2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% per annum.

DELINQUENT UTILITIES

1) Bonita Center Treatment Plant

Bonita Center Treatment Plant (Bonita Center) was a Class C utility serving 66 customers in Lee County. Order No. 22301, issued December 12, 1989, in Docket No. 890739-SU, granted Bonita Center Certificate No. 458-S to operate a wastewater treatment plant. Bonita Center discontinued the operation of its wastewater treatment plant on February 24, 1993, when it interconnected with Bonita Springs Utilities (BSU), an exempt entity. The corporation was administratively dissolved on August 25, 1995, by the Secretary of State for not filing an annual report. Bonita Center was transferred to BSU by Order No. PSC-96-1472-FOF-WS, issued December 3, 1996, in Docket No. 940725-WS, and its certificate was canceled. The utility filed an annual report for 1991, but failed to file an annual report for 1992 and 1993. Bonita Center also failed to pay RAFs for 1992 and 1993; however, the utility remains responsible for those fees pursuant to Section 367.071(2), Florida Statutes.

Notices of delinquency for failure to remit RAFs were sent to the utility on April 29, 1993, May 4, 1994 and April 21, 1995. Because the utility did not file annual reports for 1992 and 1993, staff estimated the RAFs due for those years, based on the revenues reported in the utility's 1991 annual report. The 1991 annual report reflected revenues of \$65,150. Staff multiplied the 1991 revenues by the 3.63% index rate for 1992 established by Order No. PSC-92-0136-FOF-WS, issued March 31, 1992, in Docket No. 920005-WS, to calculate estimated revenues of \$67,514.95 for 1992. The 1992 index rate was used to estimate any increase in revenues from 1991 to 1992. The estimated revenues of \$67,514.95 were then multiplied by the RAF rate of 4.5% to calculate estimated RAFs due of \$3,038.17 for 1992.

Staff multiplied the 1992 estimated revenues of \$67,515 by the 3.33% index rate for 1993 established by Order No. PSC-93-0167-FOF-WS, issued March 31, 1993, in Docket No. 930005-WS, to calculate estimated annual operating revenues of \$69,763.25 for 1993. Because the utility discontinued operations on February 24, 1993, RAFs for 1993 were only calculated for two months. Two-twelfths of the estimated revenues of \$69,763 was calculated to be \$11,627.21. Staff then multiplied this amount by the RAF rate of 4.5% to calculate estimated RAFs due for 1993 of \$523.22. This amount does not include penalties and interest.

As of November 28, 2000, the utility owes \$3,561.39 in RAFs, \$890.35 in penalties and \$3,284.92 in interest as follows:

<u>YEAR</u>	<u>RAFs</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1992	\$3,038.17	\$759.54	\$2,855.88	\$6,653.59
1993	\$523.22	\$130.81	\$429.04	\$1,083.07
TOTAL DUE	\$3,561.39	\$890.35	\$3,284.92	<u>\$7,736.66</u>

2) Eastdestin Wastewater Service, Inc.

Eastdestin Wastewater Service, Inc. (Eastdestin) was a Class C utility providing wastewater service in Okaloosa County under Certificate No. 489-S. By Order No. PSC-94-0260-FOF-SU, issued March 8, 1994, in Docket No. 930773-SU, the Commission granted Eastdestin Certificate No. 489-S to operate a wastewater system. The utility provided service to 391 connections in the Destin Area. By Order No. PSC-95-0269-FOF-WS, issued February 28, 1995, in Docket No. 940939-WS, the Commission granted the transfer of Eastdestin to Destin Water Users, a non-profit corporation, and canceled its certificate. Eastdestin was administratively dissolved on August 25, 1995, by the Secretary of State for not filing an annual report.

Because RAFs were paid late in 1992, the utility owes penalty and interest for that year in the amount of \$129.40. Also, the utility did not pay RAFs for 1994. A notice of delinquency for failure to remit 1994 RAFs was sent to the utility on April 21, 1995.

The utility did not file an annual report for 1994; therefore, operating revenues for 1994 are not known. Staff, therefore, estimated the RAFs for 1994, based on the revenues reported in the utility's 1993 annual report. The utility's 1993 annual report reflected annual operating revenues of \$73,407. Staff multiplied the 1993 operating revenues by the 2.56% index rate for 1994 established by Order No. PSC-94-0304-FOF-WS, issued March 31, 1993, in Docket No. 930005-WS, to calculate the estimated revenues of \$75,286.22 for 1994. The 1994 index rate was used to estimate any increase in revenues from 1993 to 1994. Staff then multiplied the estimated revenues of \$75,286 by the 4.5% RAF rate to calculate estimated total RAFs due for 1994 of \$3,387.88. This amount does not include any penalties or interest assessed against the utility.

As of November 28, 2000, the utility owes \$3,387.88 in RAFs and \$846.37 in penalties and \$2,337.64 in interest for 1994. The

utility also owes \$116.00 in penalties and \$13.40 interest for late payment of its 1992 RAFs.

<u>YEAR</u>	<u>RAFs</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1992	\$0.00	\$116.00	\$13.40	\$129.40
1994	\$3,387.88	\$846.37	\$2,337.64	\$6,571.89
TOTAL DUE	\$3,387.88	\$962.37	\$2,351.04	<u>\$6,701.29</u>

3) East Naples Sewer Treatment Corp.

East Naples Sewer Treatment Corp. (East Naples) was a Class C utility in Collier County that provided wastewater service to four unmetered apartment buildings, which were converted to condominiums. The utility was granted a grandfather certificate by Order No. 15834, issued March 13, 1986, in Docket No. 850373-SU. On December 23, 1994, East Naples was interconnected to Collier County. The corporation was administratively dissolved on October 11, 1991, by the Secretary of State for not filing an annual report. By Order No. PSC-93-1547-FOF-SU, issued October 21, 1993, in Docket No. 930940-SU, the Commission acknowledged interconnection of the utility to Collier County. The utility did not file annual reports for 1990 through 1992. Pursuant to Order No. PSC-93-1547-FOF-SU, East Naples remains responsible for outstanding RAFs for 1990, 1991 and 1992.

Notices of delinquency for failure to remit RAFs were sent to the utility on April 29, 1992 and April 29, 1993, respectively. Since the utility did not file annual reports for 1990, 1991, and 1992, RAFs could not be calculated for these years. Staff could not find an annual report on file for the prior years; therefore, staff has assessed the utility the minimum annual RAF payment of \$25 for each year. As of November 28, 2000, the utility owes \$75 in RAFs, and \$18.75 in penalties and \$82.50 in interest.

<u>YEAR</u>	<u>RAFs</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1990	\$25.00	\$6.25	\$32.50	\$63.75
1991	\$25.00	\$6.25	\$26.50	\$57.75
1992	\$25.00	\$6.25	\$23.50	\$54.75
TOTAL DUE	\$75.00	\$18.75	\$82.50	<u>\$176.25</u>

4) Green Acres Estates

Green Acres Estates (Green Acres) was a Class C utility, serving 166 wastewater customers in Volusia County. By Order No. 8959, issued July 16, 1979, in Docket No. 790425-WS(AP), Green Acres was granted Certificates Nos. 325-W and 272-S to operate a water and a wastewater system. On January 23, 1992 Green Acres was transferred to the City of Daytona Beach. The corporation was administratively dissolved on October 9, 1992, by the Secretary of State for not filing an annual report. By Order No. PSC-92-0589-FOF-SU, issued June 30, 1992, in Docket No. 920521-SU, the Commission acknowledged the transfer of Green Acres' wastewater facilities to the City of Daytona Beach, and its certificate was canceled. The utility did not file annual reports for 1990, 1991, and 1992. Also, in Order No. PSC-92-0589-FOF-SU, the Commission held Green Acres responsible for outstanding RAFs for 1990, 1991, and 1992.

Notices of delinquency for failure to remit RAFs were sent to the utility on April 29, 1992, and April 29, 1993, respectively. Since the utility did not file annual reports for 1990 through 1992, RAFs could not be calculated for these years. Staff could not find annual reports on file for the prior years; therefore, staff has assessed the utility the minimum annual RAF payment of \$25 for each year. As of November 28, 2000, the utility owes \$75 in RAFs, \$18.75 in penalties and \$79.50 in interest.

<u>YEAR</u>	<u>RAFs</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1990	\$25.00	\$6.25	\$29.50	\$60.75
1991	\$25.00	\$6.25	\$26.50	\$57.75
1992	\$25.00	\$6.25	\$23.50	\$54.75
TOTAL DUE	\$75.00	\$18.75	\$79.50	<u>\$173.25</u>

5) Heritage Wood 'N Lake Estates, a Division of Sunshine States Corp.

Heritage Wood 'N Lake Estates (Heritage), a Division of Sunshine State Service Corp., a wholly owned corporation of the Resolution Trust Corporation (RTC). By Order No. 22152, issued November 6, 1989, in Docket No. 890730-WS, Heritage was granted Certificate Nos. 523-W and Nos. 457-S to operate a water and a wastewater system. Heritage is a Class C utility, serving 79 water and wastewater customers in Sumter County. RTC sold Heritage in

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April 1991, to EGR Enterprises, Inc. (EGR), d/b/a Wildwood Estates. The utility was transferred to EGR by Order No. PSC-92-0335-FOF-WS, issued May 11, 1992, in Docket No. 911054-WS. Pursuant to Order No. PSC-92-0335-FOF-WS, Heritage remained responsible for the outstanding RAFs for 1990 and 1991.

A notice of delinquency for failure to remit RAFs was sent to the utility on April 29, 1992. Staff estimated RAFs based on Order No. 22152. This Order stated that Heritage provided service to approximately 80 customers in Sumter County at a flat rate of \$5.85 for water and \$7.80 for wastewater. Staff multiplied 80 customers by the flat rate of \$5.85 for water and 80 customers by \$7.80 for wastewater for the 12-month period, and then multiplied these amounts by the 1990 index rate of 4.12%, established by Order No. 24278, issued May 2, 1991, in Docket No. 910005-WS, which resulted in estimated revenues of \$5,847.38 for water and \$7,796.51 for wastewater. The total estimated revenues for 1990 are \$13,643.89. The RAF fee rate was 2.5% for the first six months of 1990 and 4.5% for the second six months; therefore, the revenues were divided in half and multiplied by 2.5% for the first six months of 1990 and 4.5% for the second six months. The utility owes \$170.55 in RAFs for the first six months of 1990 and \$306.99 for the second six months of 1990, for a total amount owed of \$477.54. The 1990 revenues were indexed by the 1991 index rate of 4.12% established by Order No. 24278, which resulted in 1991 revenues of \$14,206.02. The 1991 revenues were multiplied by the RAF rate of 4.5% resulting in RAFs owed for 1991 of \$639.27.

As of November 28, 2000, the utility owes \$1,116.81 in RAFs, \$279.21 in penalties and \$1,241.13 in interest.

<u>YEAR</u>	<u>RAFs</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1990	\$477.54	\$119.39	\$563.50	\$1,160.43
1991	\$639.27	\$159.82	\$677.63	\$1,476.72
TOTAL DUE	\$1,116.81	\$279.21	\$1,241.13	<u>\$2,637.15</u>

6) **Naples Sewer Company**

Naples Sewer Company was granted a grandfather certificate by Order No. 15802, issued March 11, 1986, in Docket No. 850426-SU, to operate a wastewater system. By Order No. PSC-92-0574-FOF-SU, issued June 26, 1992, in Docket No. 9200147-SU, the Commission acknowledged the sale of Naples Sewer Company to Collier County and canceled Certificate No. 397-S. Moreover, the Commission found

that the utility still owed RAFs for the period from January 1, 1992, through March 23, 1992. The utility did not file its 1992 annual report.

On April 29, 1993, a notice of delinquency for failure to remit its 1992 RAFs was sent to the utility. Since a 1992 annual report was not filed, the 1992 revenues were estimated based on revenues reported in 1991. The 1991 revenues of \$107,397 were multiplied by the 1992 index rate of 3.63% established by Order No. PSC-92-0136-FOF-WS to calculate estimated revenues of \$111,296 for 1992. The utility was operational for a 3 month period in 1992; therefore, the 1992 revenues of \$111,296 were multiplied by three-twelfths for estimated revenues of \$27,824 for 1992. The revenue total of \$27,824 for the first quarter was then multiplied by the RAF rate of 4.5% resulting in RAFs owed for 1992 of \$1,252. As of November 28, 2000, the utility owes \$1,252.00 in RAFs, \$313.00 in penalties and 1,176.88 interest.

<u>YEAR</u>	<u>RAFs</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
1992	\$1,252.00	\$313.00	\$1,176.88	\$2,741.88

7) Ocean City Utilities, Inc.

Ocean City Utilities, Inc. (Ocean City) is a Class B utility which provides water and wastewater service to approximately 342 water customers and 241 wastewater customers in Flagler County. The Commission granted Certificate No. 509-W to Ocean City by Order No. 20440, issued on December 9, 1985, in Docket No. 880390-WS. Order No. 24050, issued February 1, 1991, in Docket No. 900665-WS, transferred Certificate No. 391-S from Beverly Beach Surfside Utilities to Ocean City and amended Ocean City's certificated area to include the Beverly Beach service area. By Order No. PSC-96-1391-FOF-WS, issued November 20, 1996, in Docket No. 960898-WS, the utility's Certificates Nos. 509-W and 391-S were canceled when the Commission acknowledged the recision of Commission jurisdiction by Flagler County. The 1990 annual report was not filed.

On June 11, 1998, a notice of delinquency for failure to remit 1990 RAFs was sent to the utility. The 1990 revenues were estimated based on reported revenues in the 1991 annual report. The 1991 revenues of \$107,397 were divided by the 1991 index rate of 4.12% established by Order No. 24278, issued March 25, 1991, in Docket No. 910005-WS, for 1990 estimated revenues of \$103,147.33. The RAF rate was 2.5% for the first six months of 1990 and 4.5% for the second six months; therefore, the revenues were divided in half

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and multiplied by 2.5% for the first six months of 1990 and 4.5% for the second six months. The utility owes \$1,289.34 in RAFs for the first six months of 1990 and \$2,320.82 for the second six months of 1990 for a total amount owed of \$3,610.16. As of November 28, 2000, the utility owes \$3,610.16 in RAFs, and \$902.54 in penalties and \$4,259.99 interest.

<u>YEAR</u>	<u>RAFs</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
1990	\$3,610.16	\$902.54	\$4,259.99	\$8,772.69

8) Southeastern States Utilities

Southeastern States Utilities (Southeastern States) has provided water service to the residents of Canal Point through a bulk users agreement between Southeastern States and the City of Pahokee since 1965. Southeastern States was granted Certificate No. 240-W by Order No. 7079, issued January 14, 1976, in Docket No. 750487-WU(AP). The corporation was dissolved on July 14, 1992, by the Secretary of State for not filing an annual report. On June 26, 1996, by Order No. PSC-96-0829-FOF-WU, in Docket No. 960106-WU, the Commission approved, as a matter of right, the transfer of Southeastern States to the City of Pahokee and canceled its certificate.

The utility was delinquent in the payment of its 1990, 1993, and 1995 RAFs. The utility did not file a 1990 annual report; therefore, the 1990 revenues were estimated based on the revenues reported in the 1991 annual report. The 1991 revenues of \$91,489 was divided by the 1991 index rate of 4.12% established by Order No. 24278 to calculate estimated revenues of \$87,869 for 1990. The RAF rate was 2.5% for the first six months of 1990 and 4.5% for the second six month; therefore the revenues were divided in half and multiplied by 2.5% for the first six months of 1990 and 4.5% for the second six months. The utility owes 1,098.36 in RAFs due for the first six months of 1990 and \$1,977.05 for the second six months of 1990 for a total amount owed of \$3,075.41.

The utility did not file a 1993 annual report; therefore, the 1993 revenues were estimated based on 1992 revenues of \$95,911. The 1992 revenues of \$95,911 were multiplied by the 1993 index rate of 3.33% established by Order No. PSC-93-0476-FOF-WS, for \$99,104.84 in revenues for 1993. The \$99,104.84 was multiplied by the RAF rate of 4.5% for RAFs owed of \$4,459.72 for 1993.

A notice of delinquency for failure to remit 1995 RAFs was sent to the utility on April 15, 1996. The utility did not file an annual report for 1995; therefore, the 1995 revenues were estimated based on 1994 revenues of \$109,138. The 1994 revenue total of \$109,138 was multiplied by the 1995 index rate of 1.95% established by Order No. PSC-95-0202-FOF-WS, issued February 10, 1995, in Docket No. 950005-WS, for \$111,266 of estimated revenues for 1995. This 1995 revenue total was then multiplied by 4.5% for \$5,006.97 in RAFs owed for 1995. As of November 28, 2000, the utility owes \$12,542.10 in RAFs, \$3,135.53 in penalties and \$10,139.62 in interest.

<u>YEAR</u>	<u>RAFs</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1990	\$3,075.41	\$768.85	\$3,628.98	\$7,473.24
1993	\$4,459.72	\$1,114.93	\$3,656.67	\$9,231.32
1995	\$5,006.97	\$1,251.75	\$2,853.97	\$9,112.69
Total	\$12,542.10	\$3,135.53	10,139.62	\$25,817.25

9) Springs Plaza Sewer System

Springs Plaza Sewer System (Springs Plaza) was granted a grandfather certificate by Order No. 17200, issued February 18, 1987, in Docket No. 860032-SU. Springs Plaza was transferred to Forty-One Corporation by Order No. PSC-92-0407-FOF-SU, issued May 26, 1992, in Docket No. 910847-SU. The system was then transferred to Bonita Springs Utilities by Order No. PSC-93-1790-FOF-SU, issued December 14, 1993, in Docket No. 930526-SU, and its certificate was canceled. The utility was delinquent in the payment of its 1990 and 1991 RAFs.

A notice of delinquency for failure to remit 1991 RAFs was sent to the utility on April 29, 1992. The 1990 RAFs were estimated based on 1990 revenues of \$60,426. The RAF rate for 1990 was 2.5% for the first six months and 4.5% for the second six months; therefore, the \$60,426 in revenues was divided in half and multiplied by 2.5% for the first six months in 1990 and 4.5% for the second six months of 1990. The utility owed \$755.32 in 1990 RAFs for the first six months and \$1,359.59 for the second six months for a total of \$2,114.91 in RAFs owed for 1990.

The utility did not file a 1991 annual report; therefore, the 1990 revenues were indexed by the 1991 index rate of 4.12% established by Order No. 24278, for a 1991 estimated revenue total

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of \$62,916. This \$62,916 was then multiplied time \$4.5% for total RAFs owed of \$2,831.22. As of November 28, 2000, the utility owes \$4,946.13 in RAFs, \$1,236.54 in penalties and \$5,496.67 in interest.

<u>YEAR</u>	<u>RAFs</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1990	\$2,114.91	\$528.73	\$2,495.58	\$5,139.22
1991	\$2,831.22	\$707.81	\$3,001.09	\$6,540.12
TOTAL DUE	\$4,946.13	\$1,236.54	\$5,496.67	<u>\$11,679.34</u>

RESPONSIBILITY FOR REGULATORY ASSESSMENT FEES

Regulatory assessment fees are intended to cover the costs incurred by this Commission in the regulation of utilities. Apparently, the above-named utilities had no inclination to pay the fees voluntarily, nor does it appear that the utilities made a good faith effort toward payment.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[it 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 utilities' failure to pay RAFs, 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., 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Staff believes that the utilities' failure to pay RAFs rises to a level that would ordinarily warrant a show cause proceeding. However, each of these utility corporations have been dissolved. 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 RAFs. However, as discussed below, staff does not believe that the directors and shareholders of these utilities can be held responsible for the utilities' delinquent RAFs.

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, staff does not know 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. All of the corporations involved were dissolved on or before 1995. A proceeding against the shareholders would have required commencement by 1998.

Based on the foregoing, staff believes that a show cause proceeding and further collection efforts would not be cost effective. Staff has already made numerous attempts by letter to collect the delinquent RAFs, penalties and interest. Therefore, staff recommends that show cause proceedings not be initiated against the aforementioned utilities for failure to pay RAFs. Staff further recommends that the Commission refer this matter to the State Comptroller's Office, Department of Banking and Finance, for permission to write off these accounts as uncollectible.

Delinquent RAFs, Penalties and Interest for Inactive Water and Wastewater Utilities

Utility Name	Year	RAF	PENALTY	INTEREST	TOTAL
Bonita Center Treatment Plant	1992	\$3,038.17	\$759.54	\$2,855.88	\$6,653.59
	1993	\$523.22	\$130.81	\$429.04	\$1,083.07
	Total	\$3,561.39	\$890.35	\$3,284.92	\$7,736.66
Eastdestin Wastewater Service, Inc.	1992	\$0.00	\$116.00	\$13.40	\$129.40
	1994	\$3,387.88	\$846.37	\$2,337.64	\$6,571.89
	Total	\$3,387.88	\$962.97	\$2,351.04	\$6,701.29
East Naples Sewer Treatment Corp.	1989	\$25.00	\$6.25	\$32.50	\$63.75
	1991	\$25.00	\$6.25	\$26.50	\$57.75
	1992	\$25.00	\$6.25	\$23.50	\$54.75
	Total	\$75.00	\$18.75	\$82.50	\$176.25
Green Acres Estates	1990	\$25.00	\$6.25	\$29.50	\$60.75
	1991	\$25.00	\$6.25	\$26.50	\$57.75
	1992	\$25.00	\$6.25	\$23.50	\$54.75
	Total	\$75.00	\$18.75	\$79.50	\$173.25
Heritage Wood 'N Lake Estates, a Division of Sunshine States Corp.	1990	\$477.54	\$119.39	\$563.50	\$1,160.43
	1991	\$639.27	\$159.82	\$677.63	\$1,476.72
	Total	\$1,116.81	\$279.21	\$1,241.13	\$2,637.15
Naples Sewer Company	1992	\$1,252.00	\$313.00	\$1,176.88	\$2,741.88
Ocean City Utilities	1990	\$3,610.16	\$902.54	\$4,259.99	\$8,772.69
Southeastern States Utilities	1990	\$3,075.41	\$768.85	\$3,628.98	\$7,473.24
	1993	\$4,459.72	\$1,114.93	\$3,656.97	\$9,231.32
	1995	\$5,006.97	\$1,251.74	\$2,853.97	\$9,112.69
	Total	\$12,542.10	\$3,135.53	\$10,139.62	\$25,817.25

Utility Name	Year	RAF	PENALTY	INTEREST	TOTAL
Springs Plaza Sewer System	1990	\$2,114.91	\$528.73	\$2,495.58	\$5,139.22
	1991	\$2,831.22	\$707.81	\$3,001.09	\$6,540.12
	Total	\$4,946.13	\$1,236.54	\$5,496.67	\$11,679.34

NOTE: If there is no annual report on file, then staff has made an estimation.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation, upon referral to the State Comptroller's Office, Department of Banking and Finance, no further action will be required, and this docket should be closed. (FUDGE)

STAFF ANALYSIS: If the Commission approves staff's recommendation, upon referral to the State Comptroller's Office, Department of Banking and Finance, no further action will be required, and this docket should be closed.