



Public Service Commission

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RECORDS AND REPORTING

DATE: DECEMBER 20, 2000

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

FROM: DIVISION OF REGULATORY OVERSIGHT (CLAPP)
DIVISION OF LEGAL SERVICES (VAN LEUVEN) *CLAPP BSM*

RE: DOCKET NO. 000241-SU - APPLICATION FOR TRANSFER OF FACILITIES OF J. STRAUSS UTILITY TO JEA AND CANCELLATION OF CERTIFICATE NO. 244-S IN DUVAL COUNTY.
COUNTY: DUVAL

AGENDA: JANUARY 2, 2001 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\000241SU.RCM

CASE BACKGROUND

J. Strauss Utility (J. Strauss or utility) is a Class C utility providing wastewater service to five general service customers in Duval County pursuant to Order No. 7908, issued July 21, 1977, in Docket No. 770495-SU. The utility's 1996 annual report lists annual gross revenues of \$5,804 and a net loss of \$145,820.

On August 22, 2000, the utility filed an application for transfer of the wastewater system in Duval County to the City of Jacksonville's JEA (JEA or buyer). On September 28, 2000, J. Strauss filed its 1996 annual report. Pursuant to information contained in J. Strauss's application, JEA began operating and maintaining the system on March 8, 1997. On May 15, 1997, J. Strauss sold its facilities to JEA, but due to a problem with the property's legal description/survey, JEA did not issue a letter of

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acceptance for the lift station and sewage force main until January 12, 2000.

The purpose of this recommendation is to address J. Strauss's untimely 1996 annual report, to approve, as a matter of right, the transfer of the utility system to JEA, and to cancel Wastewater Certificate No. 244-S. The Commission has jurisdiction to address these matters pursuant to Sections 367.071, 367.022, and 367.156 Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge the exempt status of J. Strauss as of March 8, 1997.

RECOMMENDATION: Yes, the Commission should acknowledge the exempt status of J. Strauss as of March 8, 1997. Further staff recommends that J. Strauss should not be required to file annual reports or regulatory assessment fees (RAFs) for 1998 and 1999 (VAN LEUVEN, CLAPP)

STAFF ANALYSIS: As previously stated, J. Strauss provided service to five general service customers in Duval County. Commission staff has been corresponding with Ms. Cheri Stone, a shareholder of the former utility, Ms. Brenda Staggs-Forbes, JEA Development, and Mr. Mark Horton, Senior Project Manager for Pittman, Hartenstein & Associates, Inc. As a result of these exchanges, staff received an application for transfer to a governmental authority, J. Strauss's 1996 annual report, and information indicating that J. Strauss has been exempt from the Commission's regulation since March 8, 1997.

On February 9, 1998, Commission staff received a letter from Mr. Horton stating that on March 8, 1997, J. Strauss's lift station had begun pumping to JEA's wastewater system and was being maintained by JEA. Further, J. Strauss's application contained a Bill of Sale dated May 15, 1997, for the sale of the utility's sewage lift station and 1070 linear feet of 4 inch PVC sewage force main. Based on the representations made by the utility, JEA, and Mr. Horton, staff believes that as of March 8, 1997, J. Strauss met the necessary qualifications for an exemption from regulation because it is a system operated, managed, and controlled by a governmental entity, pursuant to Section 367.022(2), Florida Statutes. Therefore, Staff recommends that the Commission acknowledge the exempt status of J. Strauss as of March 8, 1997.

As a result of this date of exemption, staff further recommends that J. Strauss should not be required to file annual reports or RAFs for 1998 and 1999. However, it should be noted that J. Strauss has paid RAFs for the period of January 1, 1997 to May 15, 1997, in accordance with Rule 25-30.120, Florida Administrative Code. On September 28, 2000, J. Strauss untimely filed its 1996 annual report. Staff's recommendation on whether the utility should be required to show cause why it should not remit a penalty for its apparent violation of Rule 25-30.110, Florida Administrative Code, is addressed in Issue 2.

ISSUE 2: Should J. Strauss be ordered to show cause in writing, within 21 days, why it should not remit a penalty of \$3 per day for its apparent violation of Rule 25-30.110, Florida Administrative Code, for failure to timely file its 1996 annual report?

RECOMMENDATION: No. A show cause proceeding should not be initiated. (VAN LEUVEN)

STAFF ANALYSIS: As previously stated, J. Strauss filed its 1996 annual report on September 28, 2000. Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Requests for extension of time must be made in writing and filed prior to the March 31 deadline.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set forth in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3 per day. Pursuant to Rule 25-30.110(6)(c), Florida Statutes, the Commission may impose lesser or greater penalties.

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 timely file its 1996 and 1997 annual reports, 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, Florida Administrative Code, 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."

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; determine whether a utility is in substantial compliance with the Uniform System of Accounts as well as applicable rules and orders of the Commission; whether financial statements and related schedules fairly present the

financial condition and results of operations for the period presented; and whether other information presented as to the business affairs of the utility are correct for the period they represent.

Although J. Strauss's failure to timely file its 1996 annual report is an apparent violation of Rule 25-30.110, Florida Statutes, there are circumstances which appear to mitigate the utility's apparent violation. Since this utility is exempt and the Commission does not need information regarding the utility's operations on a going-forward basis to meet the requirements of Rule 25-30.110(3)(a), Florida Administrative Code, Staff believes that there would be no purpose in requiring J. Strauss to show cause for failing to timely submit its 1996 annual report. Therefore, staff recommends a show cause proceeding should not be initiated.

ISSUE 3: Should the Commission approve the transfer of the J. Strauss wastewater facility to JEA in Duval County and cancel Wastewater Certificate No. 244-S?

RECOMMENDATION: Yes. The Commission should approve, as a matter of right, the transfer of the J. Strauss wastewater facility to JEA and cancel Wastewater Certificate No. 244-S. (CLAPP, VAN LEUVEN)

STAFF ANALYSIS: The utility has provided wastewater service to five Duval County general service customers since before July 22, 1977, pursuant to Order No. 7908, issued July 21, 1977, in Docket No. 770495-SU. On August 22, 2000, J. Strauss filed an application to transfer the utility system to JEA pursuant to Section 367.071, Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. According to the application, the utility was donated to the City of Jacksonville in 1995. Included with the application is a copy of the May 15, 1997, Bill of Sale signed by the J. Strauss representative. J. Strauss also provided an Acceptance Letter from JEA dated January 12, 2000, which acts as the official acceptance for ownership, operation, and maintenance of the system.

Pursuant to Section 367.071(4)(a), Florida Statutes, the sale of facilities to a governmental authority shall be approved as a matter of right. The application is in compliance with Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. As such, no notice of the transfer is required and no filing fees apply.

The application contains a statement that JEA did not request J. Strauss's income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction. Even though JEA did not request this information in accordance with Section 367.071(4)(a), Florida Statutes, staff supplied JEA with the required information. A statement that the customer deposits and interest thereon were paid to the customers as required by Rule 25-30.037(4)(g), Florida Administrative Code, was also included in the application. Additionally, pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, a statement was included that the utility did pay outstanding regulatory assessment fees (RAFs) through May 15, 1997.

Staff recommends that the application is in compliance with all provisions of Rule 25-30.037, Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities, in whole or part, to a governmental authority shall be approved as a matter of right. Therefore, staff recommends that

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the Commission approve, as a matter of right, the transfer of J. Strauss to JEA and cancel Certificate No. 244-S.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed. (VAN LEUVEN)

STAFF ANALYSIS: No further action is required; therefore, this docket should be closed.