

REQUEST TO ESTABLISH DOCKET  
(PLEASE TYPE)

Date April 2, 2001

Docket No. 010385 - WU

- 1. Division Name/Staff Name Division of Legal Services / J. Brubaker
- 2. OPR Division of Legal Services / J. Brubaker
- 3. OCR Division of Economic Regulation / K. Peacock
- 4. Suggested Docket Title In re: Petition for variance from or waiver of Rule 25-30.110(3) and (6), F.A.C., Annual Reports, by Gem Estates Utilities, Inc.

- 5. Suggested Docket Mailing List (attach separate sheet if necessary)
  - A.
  - B.
  - 1.

Gem Estates Utilities, Inc. \_\_\_\_\_

Mrs. Hollis Malburg \_\_\_\_\_

P.O. Box 2016 \_\_\_\_\_

Zephyrhills, FL 33539-2016 \_\_\_\_\_

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2. Interested Persons and their representatives (if any)

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- 6. Check one:
  - Documentation is attached.
  - Documentation will be provided with recommendation.

M E M O R A N D U M

March 29, 2001

TO: DIVISION OF RECORDS AND REPORTING (BAYO)  
FROM: DIVISION OF LEGAL SERVICES (BRUBAKER) *JSB*  
RE: DOCKET NO. 990296-WU - APPLICATION FOR TRANSFER OF  
FACILITIES OF GEM ESTATES UTILITIES, INC. IN PASCO COUNTY  
TO GEM ESTATES MOBILE HOME VILLAGE ASSOCIATION, INC.,  
AND CANCELLATION OF CERTIFICATE NO. 563-W.

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Yesterday, March 28, 2001, a Petition for Rule Waiver from Holly Malburg was received in the Division of Legal Services. Please place in the above-referenced docket file.

JSB/lw

Attachment

cc: Division of Regulatory Oversight (Brady)

PETITION FOR WAIVER OF RULE 25-30.110(3)

25-104.002(B): THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PETITIONER ARE: GEM ESTATES UTILITIES, INC., P.O. BOX 2016 ZEPHYRHILLS, FL 33539-2016, TELEPHONE (813) 788-5463.

25-104.002(C): THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE QUALIFIED REPRESENTATIVE ARE: HOLLY J. MALBERG AND THE SAME ADDRESS AND TELEPHONE AS ABOVE.

25-104.002(D): THE APPLICABLE PORTION OF THE RULE IS 25-30.110(3). "EACH UTILITY SMALL FILE WITH THE COMMISSION ANNUAL REPORTS ON FORMS PRESCRIBED BY THE COMMISSION. THE OBLIGATION TO FILE AN ANNUAL REPORT TO ANY YEAR SHALL APPLY TO ANY UTILITY WHICH IS SUBJECT TO THIS COMMISSION'S JURISDICTION AS OF DECEMBER 31 OF THAT YEAR.

25-104.002(E): THE CITATION TO THE STATUTE THE RULE IS IMPLEMENTING G SECTION 367.121 (1)(C).

25-104.002(F): GEM ESTATES UTILITIES, INC. REQUESTS THE WAIVER OF RULE 25-30.110(3) REQUIRING THE FILING OF AN ANNUAL REPORT BY "ANY UTILITY WHICH IS SUBJECT TO THIS COMMISSION'S JURISDICTION AS OF DECEMBER 31 OF THAT YEAR" FOR THE YEAR 2000 ON THE BASIS OF SUBSTANTIAL HARDSHIP, FINANCIALLY AND OTHERWISE AND VIOLATION OF THE PRINCIPLES OF FAIRNESS.

25-104.002(G): THE SPECIFIC FACTS THAT DEMONSTRATE THE SUBSTANTIAL HARDSHIP AND VIOLATION OF PRINCIPLES OF FAIRNESS THAT JUSTIFY A WAIVER FOR THE PETITIONER ARE AS FOLLOWS:

BACKGROUND

GEM ESTATES UTILITIES, INC. IS A SMALL UTILITY THAT HAS BEEN UNDER THE FLORIDA PUBLIC SERVICE SYSTEM SINCE APPROX. 1994. THE RATE GIVEN TO US BY THE PSC WAS AND REMAINED \$4.71 PER MONTH -FLAT RATE. THE GEM ESTATES MOBILE HOMEOWNERS' ASSOC. BECAME INTERESTED IN THE PURCHASE OF THE PARK AND WATER SYSTEM. APRIL 15, 2000 WE SIGNED A CONTRACT. WE AGREED UPON A PRICE. I WANTED TO HAVE THE DEAL COMPLETED BY SEPT. 2000. THEY ASKED TO EXTEND IT IN ORDER TO ALLOW ALL RESIDENTS TO RETURN AND WORK OUT ALL THE DETAILS. I UNDERSTOOD THEIR NEED, BUT CONTINUED TO ASK THEM TO COMPLETE THIS BEFORE DEC. 31.

CONCURRENTLY I FILED FOR A RATE INCREASE, BECAUSE THE UTILITY HAD BEEN OPERATING AT A LOSS FOR MANY YEARS.( FROM SUMMER OF 1992 UNTIL APRIL 16, 1999 MY SISTER HAD BEEN IN CONTROL OF THE UTILITY. THE MANY DETAILS ARE ALREADY WELL

KNOWN TO THE PSC. MY SISTER FAILED TO DO MANY MANY TASKS REQUIRED BY THE PSC, KEEP UP WITH RECORDS ETC. SHE ALSO NEVER FILED FOR A RATE INCREASE, WHICH HAD BEEN ADVISED TO HER STRONGLY-EVEN BY THE RESIDENTS.)

THE RATE INCREASE WHICH I FILED WAS NECESSARY, SHOULD THE DEAL FOR THE SALE SOMEHOW NOT FINALIZE. AS I STATED, THE UTILITY, WITH SUCH A LOW RATE HAD BEEN LOSING MONEY EXCESSIVELY FOR MANY YEARS.

AFTER I WAS ABLE TO GET CONTROL OF THE UTILITY IN APRIL 1999 I BEGAN WORKING WITH THE PSC RE: THEIR NEEDS AND REQUIREMENTS INCLUDING PAYING PAST RA'S AND MAKING UP ANNUAL REPORTS REQUIRED BY THE PSC. I HAD TO HIRE AN ACCOUNTING FIRM TO HANDLE THE ANNUAL REPORT PROCESS. IT WAS VERY EXPENSIVE, HOWEVER NECESSARY IN ORDER TO COME IN TO COMPLIANCE.

ALL THIS WAS DONE AND THESE DETAILS ARE ALSO RECORDED WITH THE PSC. **I ALSO WANT TO EXPRESS MY SINCERE GRATITUDE TO THE PSC STAFF FOR ALL THEIR ASSISTANCE DURING A VERY TRYING AND LENGTHY PERIOD.**

FORTUNATELY THE HOMEOWNERS WORKED OUT ALL THEIR DETAILS. HOWEVER, THE SURVEY COMPANY, HIRED BY THE HOMEOWNERS DID NOT COMPLETE ITS TASK WHEN PREVIOUSLY EXPECTED. I WAS OF COURSE JUST WAITING FOR THE CLOSING. IT WAS NOT POSSIBLE FOR THE CLOSING TO TAKE PLACE UNTIL JAN. 23, 2001. I, OF COURSE, CANCELED THE APPLICATION FOR THE RATE INCREASE. THE RATE REMAINED THE SAME THROUGH DEC. 2000. I CHARGED NOTHING FOR THE FIRST 23 DAYS OF JAN. AGAIN, I WAS JUST WAITING FOR THE CLOSING TO TAKE PLACE.

#### SUBSTANTIAL HARDSHIP

AS I STATED THE RATE WAS ONLY \$4.71 PER MONTH-TOTAL (FLAT RATE). OBVIOUSLY THE UTILITY NOT ONLY DID NOT EARN MONEY, IT LOST MONEY FOR MANY YEARS. ON TOP OF THAT, THERE WERE MANY LEGAL FEES NECESSARY DURING THE PERIOD OF GETTING THE UTILITY INTO COMPLIANCE AND DURING THE NEGOTIATIONS OF THE SALE. I WOULD HAVE TO HIRE AN ACCOUNTANT AGAIN FOR THE REPORT FOR 2000. I AM A FULL - TIME TEACHER. I DO NOT HAVE THE TIME NOR THE ACCOUNTING SKILLS TO DO THE REPORT. THE HARDSHIP WOULD BE EXTREME. THE UTILITY HAD TO BARROW MONEY LONG BEFORE 2000 TO KEEP UP WITH EXPENSES. THERE IS NO MONEY.

#### VIOLATION OF PRINCIPLES OF FAIRNESS

I VERY MUCH WANTED THE SALE TO CLOSE LONG BEFORE JAN. 23, 2001. IT IS NOT FAIR THAT I SHOULD HAVE TO FILE AN ANNUAL REPORT DUE TO THE FACT I WAS JUST WAITING FOR A CLOSING. IT WAS NOT MY FAULT.

PURPOSE OF THE UNDERLYING STATUTE ACHIEVED

COMMISSION ORDER NO. PSC-98-0877-FOF-SU, ISSUED JULY 2, 1998 ON DOCKET NO. 971635-SU, STATES, "THE PURPOSE OF REQUIRING ANNUAL REPORTS IS TO ENABLE US TO CALCULATE REGULATORY ASSESSMENT FEES, AS WELL AS TO DETERMINE IF THE UTILITY IS IN AN OVEREARNINGS POSITION." THESE PURPOSES CAN BE MET WITHOUT GEM ESTATES UTILITIES BEING REQUIRED TO FILE AN ANNUAL REPORT. AS ALREADY DISCUSSED, WE WERE IN A N EXTREME **UNDEREARNINGS** POSITION. I REQUEST THAT THE WAIVER BE GRANTED.

28-104.002(I): THERE IS NO LONGER GOING TO BE A NEED FOR ANNUAL REPORTS. THE GEM ESTATES MOBILE HOME ASSOC. NOW OWNS THE WATER SYSTEM. THERE IS NO LONGER A GEM ESTATES UTILITIES, INC.

I ALSO REQUEST WAIVER OF ANY FEES PURSUANT TO 25-30.110(6).