



Public Service Commission
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COMMISSION CLERK

DATE: DECEMBER 5, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF REGULATORY OVERSIGHT (BRADY, REDEMANN) *pb*
DIVISION OF ECONOMIC REGULATION (IWENJIORAN) *36M*
DIVISION OF LEGAL SERVICES (HARRIS) *DM*

RE: DOCKET NO. 011402-WU - NOTICE OF ABANDONMENT OF WATER SERVICES IN MARION COUNTY BY SILVER CITY UTILITIES. COUNTY: MARION

AGENDA: 12/17/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\011402.RCM

CASE BACKGROUND

Silver City Utilities (Silver City or utility) is a Class C water utility currently serving approximately 46 unmetered mobile home lots in a remote area of Marion County (County). This area is in the St. Johns River Water Management District (SJRWMD) but is not considered a water use caution area. Wastewater is provided by septic system. On its 2000 annual report, the utility reported no revenues and a net operating loss of \$3,958.

Order No. 13160, issued April 2, 1984, in Docket No. 830254-W, granted Certificate No. 413-W and established initial rates and charges using a base facility/gallonage charge rate structure. However, meters have never been installed and customers have never been billed. In addition, the utility has never filed a petition for an index, rate proceeding, or for any type of rate relief.

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FPSC-COMMISSION CLERK

DOCKET NO. 011402-WU
DATE: DECEMBER 5, 2001

On October 30, 2001, one of the utility owners, Mr. David L. Small, noticed the Commission of the owners' intent to abandon the utility as of December 31, 2001. The purpose of this recommendation is for the Commission to acknowledge the notice of abandonment. Staff will file a recommendation for a later agenda conference to address any outstanding issues, including whether the utility should be show caused for failure to charge its tariffed rates and charges and the appointment of a receiver, if applicable.

The Commission has jurisdiction pursuant to Section 367.165, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge the notice of abandonment of Silver City Utilities?

RECOMMENDATION: Yes. The Commission should acknowledge the notice of abandonment and the potential for the utility to be abandoned as of, or subsequent to, December 31, 2001. The utility should be put on notice that it will be required to file a 2001 Annual Report and to remit the 2001 regulatory assessment fees within the time frame and manner prescribed by Commission rules. (BRADY, REDEMANN, IWENJIORA, HARRIS)

STAFF ANALYSIS: Section 367.165, Florida Statutes, requires 60 days' notice be given to the County or Counties in which the utility is located and to the Commission prior to the abandonment of a utility. By letter dated October 24, 2001, and filed with the Commission on October 30, 2001, Mr. Small gave the County, this Commission, and the Florida Department of Environmental Protection (FDEP), 60 days' notice of the owners' intent to abandon the utility water facilities as of December 31, 2001. Mr. Small also indicated the intent of the owners to cooperate should an extension of the notice beyond December 31, 2001, be warranted.

Staff has been aware for some time of the potential for the utility facilities to be abandoned. The Silver City Subdivision is a mobile home community located in a remote area of Marion County. Originally it was exclusively a seasonal development. Currently there are a few residents living there all year. Approximately 200 lots in the Silver City Subdivision and the water facilities which serve those lots were jointly owned by Mr. Small and two other members of the Small family. Of the 200 lots, about 100 have been sold. However, only 46 are currently receiving service. The remaining unsold lots and water facilities are still owned jointly by the Smalls.

As a history of the events leading up to the notice of abandonment, Mr. Small attached copies of letters to Commission staff dated July 27, 1999, and February 28, 2001. Mr. Small's July 27, 1999, letter explains that the owners' initial objective was to sell lots in the subdivision. As such, free water was offered as an incentive and no revenues were collected by the utility.

DOCKET NO. 011402-WU
DATE: DECEMBER 5, 2001

Sometime in 1997, the owners decided they could no longer afford to offer free water and approached the informal association formed by the mobile home owners (HOA) regarding the option of owning the water system. In May of 1998, the HOA began assuming the expenses of the water system but has never completed the legal steps necessary to assume ownership. In the Spring of 2000, Mr. Small made inquiries of staff regarding procedures for abandonment. Staff followed up by speaking with representatives of the HOA to explain the potential ramifications of abandonment.

In January of 2001, staff was contacted by the HOA. Since the HOA was paying the expenses for the utility, Mr. Small had sent the HOA the forms to file the utility's 2000 annual report. According to a representative for the HOA, there had been discussions in December of 2000 regarding acquisition of the utility facilities but the matter was not resolved. Meanwhile, the HOA was concerned about its responsibility with respect to the 2000 annual report and also about a potential abandonment. Staff indicated that the responsibility for the annual report still resided with the utility and that the owners could not abandon the utility without first giving notice.

Mr. Small's February 28, 2001, letter to staff confirmed that the HOA was still considering the acquisition of the utility facilities. Meanwhile, the utility owners agreed to file the utility's 2000 annual report. Such report was timely filed on March 7, 2001. In October of 2001, staff was again contacted by Mr. Small for the procedures for abandonment. Believing that the HOA had been given ample time to assume full responsibility for the water system, Mr. Small formally noticed the owners' intent to abandon the utility as of December 31, 2001. However, Mr. Small also indicated the owners' willingness to cooperate regarding an extension beyond December 31st, if warranted.

Since receiving the notice of abandonment, staff has been in contact with legal counsel for the County, the FDEP, the SJRWMD, Mr. Small, and representatives for the HOA. In addition, staff has been in contact with the current contract operator for the water system. As such, staff believes that all entities involved with the utility facilities are fully apprised of the situation and working as expeditiously as possible towards a mutually acceptable resolution of the matter.

DOCKET NO. 011402-WU
DATE: DECEMBER 5, 2001

At this time, it does not appear that the utility will become abandoned on December 31, 2001. However, should the utility become abandoned, Section 367.165(2), Florida Statutes, requires the County to petition the circuit court for the appointment of a receiver. Such receiver can be the County or any other person or entity such as the HOA. The responsibility of the receiver is to operate the utility efficiently and effectively from the date of abandonment until disposition of the property.

The FDEP has indicated that the water system currently meets all FDEP standards and regulations and there do not appear to be any environmental issues for the foreseeable future. The plant is designed to pump a maximum of 180,000 gallons per day (gpd). However, as noted earlier, only 46 lots are currently being served from the well. As such, average daily use is approximately 5,000 to 6,000 gpd. In addition, due to the number of current connections, the FDEP considers the Silver City facilities a non-community system. This means that reporting requirements and tests are minimal.

The SJRWMD did not know of the utility's existence until contacted by Commission staff. As a result, the utility does not have a consumptive use permit (CUP). This appears to be due to some confusion about the size of the system. In most respects, the well falls below the threshold size in which a water management district would issue a CUP. However, some specific aspects of the well design could trigger the need for a CUP. Staff has advised Mr. Small of the potential problem and he is in the process of sending the engineering information on the well to the SJRWMD for a determination of the need for a CUP. Staff will continue to monitor the situation.

The County has indicated to staff that it intends to cooperate with the Commission in every way possible to bring this matter to a successful conclusion. The Silver City Subdivision is nearly 10 miles from the County's nearest service area. The County has also indicated that the only basis upon which it would provide service to the mobile home park would be by extension of a water line from their nearest facility.

Meanwhile, the HOA is in the process of obtaining the paperwork from the Florida Department of State, Division of Corporations, in the event it decides to form a non-profit corporation for ownership of the utility. Staff has verified that

DOCKET NO. 011402-WU
DATE: DECEMBER 5, 2001

the HOA is paying all the operating costs for the system. According to the contract operator, which is the biggest portion of the operating costs, the HOA has been very responsible with respect to its accounts. The operator is willing to continue to operate the system as long as it is on behalf of Mr. Small and the HOA.

Staff will continue to work with the County, the utility, and representatives for the HOA towards a permanent resolution for the utility facilities. Once final disposition of the utility is known, staff will return to the Commission for appropriate action.

Rule 25-30.110, Florida Administrative Code, requires each utility which is subject to this Commission's jurisdiction as of December 31st of that year, to file an annual report. Since Silver City is expected to be subject to the Commission's jurisdiction on December 31, 2001, the utility will be required to file a 2001 annual report and remit the 2001 regulatory assessment fees.

Based on all the above, staff recommends that the Commission acknowledge the notice of abandonment and the potential for the utility to be abandoned as of, or subsequent to, December 31, 2001. The utility should be put on notice that it will be required to file a 2001 annual report and to remit the 2001 regulatory assessment fees within the time frame and manner prescribed by Commission rules.

DOCKET NO. 011402-WU
DATE: DECEMBER 5, 2001

ISSUE 2: Should the docket be closed?

RECOMMENDATION: No. The docket should remain open pending final disposition of the utility. (HARRIS)

STAFF ANALYSIS: The docket should remain open pending final disposition of the utility.