

State of Florida



Public Service Commission

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COMMISSION CLERK

DATE: APRIL 11, 2002

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

FROM: DIVISION OF ECONOMIC REGULATION (RIEGER, KAPROTH) *SRP KK JS*  
DIVISION OF LEGAL SERVICES (ESPINOZA) *JTE JJJ*

RE: DOCKET NO. 020223-WU - NOTICE OF ABANDONMENT OF WATER SERVICES IN ALACHUA COUNTY BY SANTA FE HILLS WATER SYSTEM. COUNTY: ALACHUA

AGENDA: 04/23/02 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\020223.RCM

CASE BACKGROUND

Santa Fe Hills Water System (Santa Fe Hills or utility) is a Class C water utility currently serving approximately 50 residential connections within the Santa Fe Hills subdivision near the City of Alachua in Alachua County (County). This area is in the Suwannee River Water Management District (SRWMD) and is not considered a water use caution area. Wastewater is provided by septic systems.

The Commission gained jurisdiction in Alachua County on June 30, 1992. By Order No. PSC-93-1380-FOF-WU, issued September 20, 1993, in Docket No. 930569-WU, the Commission granted the utility Grandfather Certificate No. 557-W and approved initial rates and charges using a base facility/gallonage charge rate structure. The original rates and charges granted in the 1993 certificate order have remained in effect since the utility has never filed a

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PSC-COMMISSION CLERK

petition for an index, rate proceeding, or for any type of rate relief.

On February 18, 2002, Mr. Larry A. Gonzales, the son of the owner of the utility, gave notice to Alachua County that the utility was to be abandoned within sixty days. On March 11, 2002, the Commission received notice of the owner's intent to abandon. On March 21, 2002, the County of Alachua was appointed receiver by the Circuit Court in the Eighth Judicial Circuit in and for Alachua County, Florida. The term of the receivership will begin on April 19, 2002.

The purpose of this recommendation is for the Commission to acknowledge the notice of abandonment, acknowledge the appointment of the County as the Receiver for the utility, and to cancel the certificate. Pursuant to Section 367.022(2), Florida Statutes, utility systems owned, managed, or controlled by governmental authorities are exempt from Commission regulation.

According to staff's records, Santa Fe Hills has failed to file its annual reports for the years 1993 through 2001, and has failed to pay its RAFs for the years 1996 through 1998 and 2000 through 2001. Rule 25-30.110, 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. 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.

Pursuant to Rule 25-30.120(2), Florida Administrative Code, the obligation to remit the regulatory assessment fee for any year shall apply to any utility which is subject to this Commission's jurisdiction on or before December 31 of that year. Further, pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(5), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its regulatory assessment fees. In addition, pursuant to Sections 367.145(1)(b) and 367.161, Florida Statutes, and Rule 25-30.120(5)(b), Florida Administrative Code, the Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner.

DOCKET NO. 020223-WU

DATE: APRIL 11, 2002

Staff has contacted the utility owner regarding the issue of the outstanding annual reports and RAFs, and is currently attempting further collection efforts, and a possible payment plan. Should these efforts prove unsuccessful, or if the utility agrees to a payment plan, staff will address the outstanding annual reports and RAFs in a later recommendation in this docket.

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 Santa Fe Hills Water System?

**RECOMMENDATION:** Yes. The Commission should acknowledge the utility's notice pursuant to Section 367.165, Florida Statutes. (RIEGER, ESPINOZA)

**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 February 18, 2002, and filed with the Commission on March 11, 2002, Mr. Gonzales gave the County, the Florida Department of Environmental Protection (FDEP), and this Commission, 60 days' notice of the owners' intent to abandon the utility water facilities as of April 22, 2002.

Located near the Town of Alachua, in Alachua County, the developer-related utility provides water service to approximately 50 residential connections in the Santa Fe Hills Subdivision. According to the 1993 grandfather certificate order, the utility has been in service since 1960, with a total of 84 connections anticipated at buildout.

According to the abandonment notice, Mr. Gonzales indicated that the owner and manager (his mother) is 86 years old and is no longer able to properly manage and maintain the system. Mr. Gonzales also stated that the system was running well and that there were no present citations or violations of which he was aware. However, the FDEP has indicated to staff that the water system is not currently meeting all FDEP standards and regulations. The deficiencies include disinfection, metering, chemical testing, record keeping, and operating problems. In general the system is in poor condition. The utility has failed to respond to previous FDEP warning letters, and the owner has been noticed that the operation of a facility in violation of state statutes or rules may result in liability for damages and restoration, with possible penalties resulting. To date, there has been no formal FDEP proceeding against this utility.

The SRWMD did not know of the utility's existence until contacted by Commission staff. As a result, the utility does not have a water use permit. The SRWMD does not consider the utility

DOCKET NO. 020223-WU

DATE: APRIL 11, 2002

service area to be in a water use caution area. Therefore, no water use restrictions exist for this utility.

In response to the abandonment notice, on March 21, 2002, the County of Alachua was appointed receiver for this utility, effective April 19, 2002. The acknowledgment of the County as receiver will be discussed in Issue 2 to this recommendation.

Based on all the above, staff recommends that the Commission acknowledge the utility's notice of abandonment pursuant to Section 367.165, Florida Statutes.

**ISSUE 2:** Should the Commission acknowledge the appointment of Alachua County as the receiver for the utility and cancel Certificate No. 557-W?

**RECOMMENDATION:** Yes. The Commission should acknowledge the appointment of Alachua County as the receiver for the utility and cancel Certificate No. 557-W. (RIEGER, ESPINOZA)

**STAFF ANALYSIS:** By Order dated March 21, 2002, Alachua County petitioned and was appointed receiver of the utility in Case No.: 01-02-CA-1061 by the Circuit Court of the Eighth Judicial Circuit in and for Alachua County, Florida. 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 Homeowner's Association(HOA). The responsibility of the receiver is to operate the utility efficiently and effectively from the date of abandonment until disposition of the property. At the present time, the County has taken that responsibility. The County will begin operating the utility effective April 19, 2002.

The Circuit Court's Order directed the Receiver to operate the water system until the system is disposed of in such a manner so as to provide efficient, effective and environmentally continuous service to the customers of the utility during the term of this receivership, and as can be provided from the revenues of the system. The Receiver is also required to submit to the Court quarterly financial and operational reports for the water system for the duration of its receivership.

In discussions with the County, staff has learned that although it considers itself obligated to find a receiver, pursuant to Section 367.165 Florida Statutes, the County is reluctant to become one. To the County, the best option for this system is to interconnect it to the nearby water main belonging to the City of Alachua, and have the City absorb Santa Fe into its service area. Given the age of the Utility's distribution system (40+ years), the City has already expressed concern to the County that its high pressure system would damage the lines owned by the utility. Given that concern, the City has subsequently declined the interconnection option as an immediate solution. The City has applied to FDEP's Drinking Water State Revolving Fund for funding that will include replacement of the utility's distribution system at an estimated cost of \$466,425. The real extent of the funding

DOCKET NO. 020223-WU

DATE: APRIL 11, 2002

support for this project will not be known until the application process is complete. During the interim, the County intends to operate the utility as required in the receivership order. Given the discussion above, staff recommends that the County of Alachua be acknowledged as receiver for this utility.

Pursuant to Section 367.022(2), Florida Statutes, utility systems owned, managed, or controlled by governmental authorities are exempt from Commission regulation. Since on March 21, 2002, the County of Alachua, a governmental authority, was appointed receiver for this utility, staff recommends that the utility's certificate be cancelled. However, it should be noted that cancellation of the utility's certificate does not relieve the utility's obligation regarding the outstanding RAFs and annual reports.

Pursuant to Rule 25-30.060, (3), Florida Administrative Code, within 10 days of the appointment of the receiver by the circuit court, the receiver shall request from the Commission a copy of the utility's tariff and most recent annual report. A copy of the utility's tariff has been sent to the County; however, no annual reports were sent since none have been filed with the Commission.

DOCKET NO. 020223-WU

DATE: APRIL 11, 2002

**ISSUE 3:** Should the docket be closed?

**RECOMMENDATION:** No. The issue of the outstanding annual reports and regulatory assessment fees will be addressed in a later recommendation after staff has attempted further collection efforts from the utility owners. (ESPINOZA, KAPROTH)

**STAFF ANALYSIS:** As stated in the case background, the issue of the outstanding annual reports and regulatory assessment fees will be addressed in a later recommendation after staff has attempted further collection efforts from the utility owners. It should be noted that cancellation of the utility's certificate, as recommended in Issue 2, does not relieve the utility's obligation regarding the outstanding RAFs and annual reports.