

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: AUGUST 22, 2002

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

FROM: OFFICE OF THE GENERAL COUNSEL (HOLLEY) *JAM*
DIVISION OF ECONOMIC REGULATION (PEACOCK) *JS*

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

AGENDA: 09/03/02 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

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

CASE BACKGROUND

Santa Fe Hills Water System (Santa Fe Hills or utility) was a Class C water utility that served approximately 50 residential connections within the Santa Fe Hills subdivision near the City of Alachua in Alachua County (County).

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.

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 Eight Judicial Circuit in and for Alachua

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PSC-COMMISSION CLERK

DOCKET NO. 020223-WU
DATE: August 22, 2002

County, Florida. The term of the receivership began on April 19, 2002.

This docket was opened in order for the Commission to acknowledge the notice of abandonment, acknowledge the appointment of the County as the Receiver of the utility, and to cancel the certificate. By Order No. PSC-02-0604-FOF-WU, issued May 2, 2002, the Commission acknowledged the notice of abandonment, the appointment of the County as the Receiver, and canceled Certificate No. 557-W. In addition, the Commission ordered this docket to remain open so that staff could continue its collection efforts with respect to outstanding annual reports and regulatory assessment fees (RAFs).

According to staff's records, Santa Fe Hills failed to file its annual reports for the years 1993 through 2001, and failed to pay its RAFs for the years 1996 through 1998, and 2000 through April of 2002. 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 timely file a 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 RAFs in a timely manner.

As stated previously, this docket has remained open in order for staff to continue its collection efforts of outstanding RAFs and annual reports. On July 24, 2002, payment in the amount of \$3,349.21 was received by the Commission Clerk and Administrative Office. This amount represented the outstanding amount of RAFs, penalties, and interest that was owed by Santa Fe to date.

DOCKET NO. 020223-WU
DATE: August 22, 2002

The purpose of this recommendation is to address the remaining issue of Santa Fe's outstanding annual reports for the years 1993 to 2001. Specifically, whether Santa Fe should be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to comply with Rule 25-30.11093(a), Florida Administrative Code, whether the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, should be assessed against the utility, and whether the utility should be required to file its annual reports for the years 1993 through 2001. The Commission has jurisdiction to consider this matter pursuant to Section 367.161, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Santa Fe be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to file its annual reports for the years 1993 through 2001 in apparent violation of Rule 25-30.110(3), Florida Administrative Code?

RECOMMENDATION: No. Show cause proceedings should not be initiated at this time. Staff further recommends that the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, should not be assessed, as the information contained in the delinquent reports is no longer needed for the ongoing regulation of the utility. In addition, Santa Fe should not be required to file the annual reports for the years 1993 through 2001. (HOLLEY, PEACOCK)

STAFF ANALYSIS: Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to Commission jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Annual reports are considered filed on the day they are postmarked or received by the Commission. Pursuant to Rule 25-30.110(3)(c), Florida Administrative Code, a utility may file a written request for an extension of time with the Commission no later than March 31, and one extension of 30 days will be automatically granted upon request. Santa Fe is in apparent violation of Rule 25-30.110(3), Florida Administrative Code, for the failure to file its annual reports for the years 1993 through 2001.

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 1995 and 1996 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 "in our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Section 367.161, Florida Statutes, authorizes

this Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order or provision of Chapter 367, Florida Statutes.

Moreover, 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 out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3 per day, based on the number of calendar days elapsed from March 31, or from an approved extended filing date. As of the date of the September 3, 2002 Agenda Conference, for the utility's annual reports for the years 1993 through 2001, staff has calculated that the total penalty would be \$43,659 calculated as follows:

YEAR	CALCULATION	AMOUNT
1993	3,078 x \$3/day	\$9,234
1994	2,713 x \$3/day	\$8,139
1995	2,348 x \$3/day	\$7,044
1996	1,982 x \$3/day	\$5,946
1997	1,617 x \$3/day	\$4,851
1998	1,252 x \$3/day	\$3,756
1999	886 x \$3/day	\$2,658
2000	521 x \$3/day	\$1,563
2001	156 x \$3/day	\$468
	TOTAL DUE	\$43,659

The penalty, if it were assessed, would continue to accrue until such time as Santa Fe files its annual reports for the years 1993 through 2001. Staff notes that pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, the Commission may, in its discretion, impose greater or lesser penalties for such noncompliance.

Staff believes, however, that the circumstances in this case are such that show cause proceedings should not be initiated at this time, nor should penalties be assessed. As discussed in the case background, pursuant to the utility owner's notice of abandonment, the County of Alachua was appointed receiver by the Circuit Court in the Eight Judicial Circuit in and for Alachua County, Florida. The term of the receivership began on April 19, 2002. Order No. PSC-02-0604-FOF-WU, issued May 2, 2002, the Commission acknowledged the notice of abandonment, the appointment of the County as the Receiver, and canceled Certificate No. 557-W. In addition, the Commission acknowledged that pursuant to Section 367.022(2), Florida Statutes, utility systems owned, managed, or controlled by governmental authorities are exempt from the Commission's regulation. Thus, the Commission found it appropriate to cancel the utility's certificate since the County of Alachua is a governmental authority exempt from Commission regulation.

The utility has made a good faith effort to cooperate with staff, and as mentioned previously, was able to pay in full the entire amount of RAFs, penalties, and interest owed. Further, because the utility is no longer subject to Commission regulation, the information contained in the annual reports for the years 1993 through 2001 is no longer needed by the Commission.

For the foregoing reasons, staff does not believe that the apparent violation of Rule 25-30.110(3), Florida Administrative Code, rises in these circumstances to the level of warranting the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Santa Fe to show cause, in writing within 21 days, why it should not be fined for its failure to file its annual reports for the years 1993 through 2001. Staff further recommends that the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, should not be assessed, as the information contained in the delinquent reports is no longer needed for the ongoing regulation of the utility. Additionally, staff recommends that Santa Fe should not be required to file its annual reports for the years 1993 through 2001.

DOCKET NO. 020223-WU
DATE: August 22, 2002

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. Because no further action is necessary, this docket should be closed. (HOLLEY, PEACOCK)

STAFF ANALYSIS: Because no further action is necessary, this docket should be closed.