



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

JUL 23 11:00 AM  
COMMISSION CLERK

**DATE:** JULY 24, 2003

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

**FROM:** OFFICE OF THE GENERAL COUNSEL (FLEMING) *KEP next*  
 DIVISION OF ECONOMIC REGULATION (KAPROTH) *KKJS DM JDT TJD*  
 DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES  
 (MOORE) *LB km*

**RE:** DOCKET NO. 030449-WS - DISPOSITION OF DELINQUENT REGULATORY ASSESSMENT FEES FOR HUNTER CREEK UTILITIES, LLC IN CHARLOTTE COUNTY.

**AGENDA:** 08/05/03 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\030449.RCM

### CASE BACKGROUND

Hunter Creek Utilities, LLC (Hunter Creek) is a Class C Water and Wastewater utility located in Charlotte County. Hunter Creek was granted an original certificate of operation by Order No. PSC-99-0756-FOF-WS, issued on April 19, 1999, in Docket No. 980731-WS.

Hunter Creek has failed to pay its regulatory assessment fees (RAFs) for the time period of 1999, 2000, 2001, and January 1, 2002, through November 25, 2002. Pursuant to Rule 25-30.120(2), Florida Administrative Code, the obligation to remit RAFs for any year shall apply to any utility which is subject to this Commission's jurisdiction on or before December 31 of that year.

On November 19, 2001, staff contacted John Leonette, the utility manager, via certified mail regarding the delinquent

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regulatory assessment fees. Staff never received a response. On December 20, 2002, staff again contacted Mr. Leonette. On January 7, 2003, David Olmsted, an attorney representing the party foreclosing on the utility, contacted staff stating that his clients undertook a foreclosure action on Hunter Creek on July 26, 2002.

This recommendation addresses whether Hunter Creek should be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to remit its regulatory assessment fees as required by Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code.

The Commission has jurisdiction to pursue collection efforts for the failure to timely pay RAFs pursuant to Sections 367.145 and 367.161, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Hunter Creek Utilities, LLC be ordered to show cause, in writing, within 21 days why it should not be fined for failure to remit its regulatory assessment fees as required by Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code?

**RECOMMENDATION:** No. A show cause proceeding should not be initiated. Staff further recommends that the Commission refer the utility's unpaid regulatory assessment fees and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible. (FLEMING, KAPROTH)

**STAFF ANALYSIS:** Pursuant to Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each water and wastewater utility shall remit annually RAFs in the amount of 0.045 of its gross operating revenue. Pursuant to Rule 25-30.120(2), Florida Administrative Code, "[t]he obligation to remit the [RAFs] for any year shall apply to any utility which is subject to [the] Commission's jurisdiction on or before December 31 of that year or for any part of that year . . . ." Accordingly, Hunter Creek is responsible for RAFs for the time period of 1999, 2000, 2001, and January 1, 2002, through November 25, 2002. In failing to remit the RAFs for this period, Hunter Creek is in apparent violation of the above-referenced statutory and rule provisions.

Furthermore, pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.
2. The amount of interest to be charged is 1 percent for each 30 days or fraction thereof, not to exceed a total of 12 percent per annum.

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Staff's calculation of the RAFs, plus penalties and interest owed by Hunter Creek for the period indicated above is set out below. As of August 5, 2003, the amounts due are as follows:

TIME PERIOD	RAF AMOUNT	PENALTY	INTEREST	TOTAL
1999 - WATER	\$410.72	\$102.68	\$168.39	\$681.79
1999 - WASTEWATER	\$275.09	\$68.77	\$112.78	\$456.64
2000 - WATER	\$428.13	\$107.03	\$124.16	\$659.32
2000 - WASTEWATER	\$192.33	\$48.08	\$55.78	\$296.19
2001 - WATER	\$452.03	\$113.01	\$76.84	\$641.88
2001 - WASTEWATER	\$301.37	\$75.34	\$51.23	\$427.94
January - November 2002 - WATER	\$397.53	\$99.38	\$19.88	\$516.79
January - November 2002 - WASTEWATER	\$265.04	\$66.26	\$13.25	\$344.55
<b>TOTAL DUE</b>				<b>\$4,025.10</b>

#### Staff Analysis on Whether Show Cause Action Should be Initiated

As indicated above, Hunter Creek is in apparent violation of Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, for failure to submit RAFs.

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 pay RAFs, plus applicable penalties and interest, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL

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titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

With respect to Hunter Creek's failure to remit RAFs and the penalties and interest incurred, staff believes that the circumstances in this case are such that show cause proceedings should not be initiated.

Numerous attempts to contact John Leonette, Utility Manager of Hunter Creek, have been made by staff via certified mail. On January 7, 2003, staff received a letter from David Olmsted, an attorney representing the party foreclosing on the utility, stating that his clients undertook a foreclosure action on Hunter Creek on July 26, 2002. As such, staff believes that further collection efforts would not be cost effective. Staff believes that any further attempts to collect would be futile, because in this situation, the corporate entity no longer exists.

For these reasons, staff recommends that show cause proceedings not be initiated against Hunter Creek for its apparent violation of the aforementioned statutes and Commission rules. Staff recommends that the Commission refer the utility's unpaid RAFs and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible.

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**ISSUE 2:** Should this docket be closed?

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

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