



**Public Service Commission**  
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TALLAHASSEE, FLORIDA 32399-0850

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

**DATE:** February 5, 2004  
**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)  
**FROM:** Office of the General Counsel (Rodan) JAR Ned JDJ  
Division of Economic Regulation (Kaproth) KK JS DM TJD  
**RE:** Docket No. 040078-WS – Disposition of delinquent regulatory assessment fees and penalties for General Development Utilities, Inc., a company no longer subject to Florida Public Service Commission jurisdiction.

**AGENDA:** 02/17/04 – Regular Agenda – Interested Persons May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\040078.RCM.DOC

**Case Background**

General Development Utilities, Inc. (GDU) has failed to remit its regulatory assessment fees (RAFs), plus penalties and interest for January 1, 1996 through February 28 1996, as required by Order No. PSC-96-0746-FOF-WS, issued June 6, 1996, in Docket No. 960218-WS, In Re: Application for approval of sale of General Development Utilities, Inc. (Port Labelle Division) to Hendry County and cancellation of Certificate Nos. 526-W and 460-S in Glades and Hendry Counties. In 1996, GDU sold its water and wastewater facilities in Glades and Hendry Counties to Hendry County. Order No. PSC-96-0746-FOF-WS acknowledged the sale, effective February 29, 1996, and also ordered GDU to remain responsible for all outstanding RAFs for the period of January 1, 1996 through the date of the transfer. However, the RAFs were never paid, and GDU has since been dissolved. Staff has exercised reasonable efforts to collect the outstanding RAFs. Staff was able to find that GDU is still registered as a corporation through the Florida Department of State and had several addresses listed. Staff sent certified letters to all the officers listed, but did not receive any response. Because numerous attempts to collect the unpaid RAFs have been unsuccessful, and because the utility no longer exists, staff believes that it is appropriate for the Commission to refer the utility's unpaid RAFs and associated penalties

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and interest to the Department of Financial Services for permission to write off the accounts as uncollectible.

Pursuant to Rule 25-30.120(2), Florida Administrative Code, RAFs must be paid by March 31 of each year. Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs. In addition, pursuant to Sections 367.145(1)(b) and 367.161, Florida Statutes, and Rule 25-30.120(7)(b), Florida Administrative Code, the Commission may impose an additional penalty upon a utility for failure to pay RAFs in a timely manner.

This docket was opened in order for the Commission to address the failure of GDU to pay its outstanding RAFs, plus any applicable penalties and interest. The RAFs, penalties, and interest GDU owes is detailed in the staff analysis.

This recommendation specifically addresses whether GDU should be ordered to show cause, in writing, within 21 days, why it should not remit RAFs, statutory penalties, and interest in their respective amounts for its apparent violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, for failure to timely pay regulatory assessment fees for January 1, 1996 through February 28, 1996.

Although GDU has been dissolved, the Commission maintains jurisdiction to pursue collection efforts for the failure to timely pay RAFs pursuant to Sections 367.071(2), 367.145 and 368.161, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should GDU be ordered to show cause, in writing, within 21 days, why it should not remit RAFs, statutory penalties, and interest in their respective amounts for violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, for failure to timely pay regulatory assessment fees for January 1, 1996 through February 28, 1996?

**Recommendation:** No. Show cause proceedings should not be initiated under these circumstances. Staff further 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, in the amounts identified in the staff analysis. (RODAN, KAPROTH)

**Staff Analysis:** In establishing rates, the Commission includes in its determination of the revenue requirements the utility's obligation to pay RAFs. However, as noted above, GDU failed to pay RAFs for the period of time indicated. Although GDU has been dissolved, it remains responsible for those fees pursuant to Section 367.071(2), Florida Statutes.

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Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7)(a), 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% 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%.
2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% per annum.

As noted above, pursuant to Order No. PSC-96-0746-FOF-WS, the Commission approved the transfer of GDU to Hendry County. However, that Order determined that GDU would remain responsible for all outstanding RAFs through the date of the transfer.

Staff's calculation of the RAFs, plus penalty and interest for the periods indicated above is set out below. As of February 29, 2004, the amount due is as follows:

<u>RAF</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$5,577.82	\$1,394.46	\$4,629.59	\$11,601.87

#### RESPONSIBILITY FOR REGULATORY ASSESSMENT FEES

Regulatory assessment fees are intended to cover the costs incurred by this Commission in the regulation of utilities. Despite GDU having been found by this Commission to be responsible for the RAFs for the period of time indicated, it has not paid the RAFs which are now past due.

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 utilities' 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 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. Staff believes the utility's failure to pay RAFs rises to a level that would ordinarily warrant a show cause proceeding. However, after the transfer of the utility to Hendry County, GDU has since been dissolved.

Based on the foregoing, staff believes that a show cause proceeding and further collection efforts are not warranted. Staff found that GDU is still registered as a corporation through the Florida Department of State and made an attempt by sending certified letters dated July 31, 2002, to all the officers listed to collect the delinquent RAFs, penalties and interest due for January 1,

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1996 through February 28, 1996. Staff believes that any further attempts to collect would be futile because, in this instance, the utility has been dissolved.

Therefore, staff recommends that show cause proceedings not be initiated against GDU for failure to pay RAFs. Staff further recommends that the Commission refer this matter to the Department of Financial Services, for permission to write off these accounts as uncollectible.

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

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

**Staff Analysis:** Because no further action is necessary, this docket should be closed.