

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for waiver of 2005 annual report
penalty for Highlands Utilities Corporation.

DOCKET NO. 060753-SU
ORDER NO. PSC-07-0124-PAA-SU
ISSUED: February 12, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING REQUEST FOR WAIVER OF REMAINING PENALTIES FOR
LATE FILING OF 2005 ANNUAL REPORT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

Highlands Utilities Corporation (Highlands or utility) is a Class B wastewater utility located in Highlands County. The utility provides service to 1,504 wastewater customers. Based on the utility's 2005 annual report, Highlands reported gross annual wastewater revenues of \$638,388; operating expenses of \$700,844; and net operating income of a negative \$62,456.

Pursuant to Rule 25-30.110(3)(a), Florida Administrative Code, the utility's 2005 annual report was due on March 31, 2006. On March 27, 2006, the utility requested a thirty-day extension to May 1, 2006, to file its 2005 annual report. On March 29, 2006, that request was automatically granted pursuant to Rule 25-30.110(3)(c), Florida Administrative Code. On May 17, 2006, the Division of Economic Regulation sent a delinquent 2005 annual report letter because the utility had not yet filed its annual report. This letter stated that the penalty for a Class C utility is \$3 per day for each calendar day elapsed from the due date of the filing.

By letter dated June 5, 2006, Highlands requested a second extension to file its 2005 annual report to June 30, 2006. By letter dated June 6, 2006, the request for extension of time

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was granted for good cause shown pursuant to Rule 25-30.110(3), Florida Administrative Code. The utility explained that its long-time accountant had a brain tumor and he did not realize the annual report was not filed until he received staff's May 17, 2006 letter. On June 12, 2006, the utility paid a penalty of \$108 (36 days late x \$3, for the period of May 1, 2006 through June 5, 2006), but still had not filed its annual report. However, since Highlands is a Class B utility, it should be assessed a penalty of \$13.50 per day pursuant to Rule 25-30.110(7)(b), Florida Administrative Code, rather than the \$3 per day penalty assessed for Class C utilities.

The utility failed to file its annual report by the June 30, 2006, extended deadline. Therefore, on July 18, 2006, the Division of Economic Regulation sent a second delinquent annual report penalty letter. By letter dated July 24, 2006, the utility requested a July 24, 2006, due date in lieu of the June 30, 2006 due date. The annual report was filed on July 24, 2006. That extension was not granted.

On July 26, 2006, the Division of Economic Regulation sent a third delinquent annual report penalty letter. Because the annual report was filed on July 24, 2006, it was late a total of 24 days from the June 30, 2006, extended deadline, plus the initial 36 days late before the second extension request, for an outstanding penalty amount of \$810 (\$13.50 x 60 days).¹ The amount owed is \$702, which is the total amount owed minus the initial payment of \$108. By letter dated September 29, 2006, the utility requested that the outstanding penalty be waived for good cause shown, pursuant to Rule 25.30-110(3)(c), Florida Administrative Code

We have jurisdiction pursuant to section 350.117, Florida Statutes, and Rule 25-30.110, Florida Administrative Code.

Request for Waiver of Penalties

Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to this Commission's jurisdiction as of December 31st of any year to file an annual report for that year. The report is due by March 31st for the preceding year ending December 31st, but was extended to June 30, 2006 in this docket. The utility requests that the remaining penalty be waived, stating that there is good cause for the noncompliance and that the requested waiver relates solely to the penalties associated with the 2005 annual report.

In its September 29, 2006, letter, the utility states the basis for the first two extensions was the illness of the accountant beginning April 15, 2006. The utility described in a time line the diagnosis of a brain tumor, surgery, chemotherapy and radiation treatments, and stated that the treatment was more debilitating than anticipated.

We have verified that the utility has filed its annual reports on a timely basis in the past, except for the 1991 annual report when a \$162 penalty was paid. All the regulatory assessment fees, penalties and interest have been paid through July 31, 2006.

¹ The July 26, 2006, letter incorrectly states that the annual report was initially 35 days late rather than 36 days late.

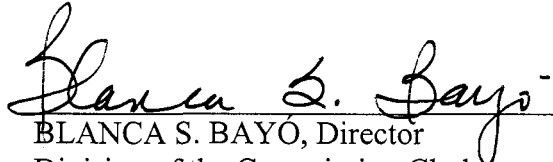
Rule 30.110(6)(c), Florida Administrative Code, states that a utility shall be subject to the penalties imposed by the rule unless it demonstrates good cause for the noncompliance. The rule further provides that we may, in our discretion, impose penalties for noncompliance that are greater or lesser than provided by the rule. We find that Highlands has shown good cause as to why its 2005 annual report was not timely filed. Therefore, the utility's request for waiver of the remainder of its 2005 annual report penalties in the amount of \$702 is hereby granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Highlands Utilities Corporation's request for waiver of its remaining penalties for the late filing of its 2005 annual report is granted. It is further

ORDERED that if no timely protest is filed by a person whose interests are substantially affected by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto, this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 12th day of February, 2007.


BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 5, 2007.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.