

Abandonments and Receiverships  
in the Florida  
Water and Wastewater Industry

*Prepared by*

**Division of  
Policy Analysis  
and  
Intergovernmental Liaison**

October 2001

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# **ABANDONMENTS/RECEIVERSHIPS**

## ***I. Introduction***

Approximately two regulated water and wastewater utilities are abandoned by their owners each year. Utility abandonments usually require significant remedial efforts on the part of the PSC, the environmental regulators, the county government, and the courts. Receiverships almost always follow abandonments; however, abandonments do not always precede receiverships. Receiverships may come about as a result of a bankruptcy. The common thread of most receiverships and abandonments is lack of adequate cash flow or inability to attract capital to fund required utility system improvements. The purpose of this paper is to provide a background on abandonments, receiverships and related issues, to explain how the agency has approached the problem in the past, and to suggest possible new approaches to improve how the agency addresses these regulatory concerns.

## ***II. Factors Leading to Abandonment***

A list of abandonment dockets this Commission has processed by year from 1992 through 2000 is shown on Attachment 1. There were an unusually high number of abandonments in 1994. The staff performed a detailed analysis of the circumstances and factors that led to the abandonments in those cases. The following is a summary of the results of the staff's analysis:

### **A. Ability to Attract Capital**

The common problems facing small utilities are well documented and appeared to some degree in all of the utilities that were studied. The first and the most devastating are the closely related problems of inadequate cash flow and inability to attract capital, i.e., the inability to borrow money or otherwise finance any capital improvements or replacements. This was the primary reason for abandonment in most of the cases studied. The analysis also found that even under capable management, there was little, if any, likelihood that the utilities could generate the necessary capital internally, either to fund improvements directly or to attract the capital needed for improvements or expansion. For example, one utility was abandoned because it was unable to add additional customers due to disposal limitations and unable to finance the needed expansion. It should also be noted that the need for major upgrades or improvements do not necessarily result from deferred maintenance or neglect. Sometimes environmental standards have simply become too difficult for an old, and/or low capacity utility to achieve.

### **B. Economies of Scale**

The second major factor contributing to small system decline was economies of scale, or lack thereof. The fixed cost of operating water and wastewater treatment plants are a large portion of total cost. Thus, the more customers that you are able to serve, the lower the per customer cost. In addition, the incremental cost of capacity falls as the size of the treatment facility increases. Therefore, the larger the plant, the more cost effective it is. For each of the systems studied, the lack

of economies of scale created significant upward pressure on rates making rate increases due to plant improvements less palatable to the customers.

### **C. Regulatory Lag**

The third critical but less recognized issue for the small utilities is regulatory lag. The Florida PSC has been a leader in reducing the regulatory burden on small systems by offering Staff Assisted Rate Cases (SARC); however, a SARC is a long and arduous process. The best case scenario to complete a SARC is approximately six months, because of the depth of analysis performed. Of the cases studied, several utilities were abandoned during the SARC.

Abandonments and receiverships usually result from dire financial distress. In most cases, the utility was suffering cash losses long before the system was abandoned. Unfortunately, as noted above, rate relief through the SARC process takes at least six months. That means that the receiver must be willing to finance at least that many months of losses before receiving rate relief.

During the mid 1990 time frame, the Commission would occasionally approve "Emergency Rate Relief" in receiverships; however, rates were approved subject to refund, and the utility had to provide security for the refunds. In most cases, the additional revenue was placed in escrow which protected the customers, but did not help the day-to-day financial distress of the utility.

### **D. Rate Base Regulation**

The water and wastewater industry is one of the most capital intensive per customer, requiring extremely large investments in fixed assets. Thus, the ability to raise capital is a critical component of utility operations. Utilities usually obtain necessary capital funding through a combination of external and internal sources. External sources consist of common stock, preferred stock, long term debt and short-term debt. Internal sources of funds are depreciation and retained earnings.<sup>1</sup>

Smaller utilities typically have difficulty raising capital through external sources. Their size prevents them from selling stocks and bonds via the capital markets. Loans are often difficult to obtain, and if obtained, usually come at the expense of the owners' personal guarantee or collateral. Lenders are reluctant to fund small utilities because of poor capitalization levels, inadequate cash flow, deteriorating plant and regulatory uncertainty. In some cases, utility owners have found it necessary to finance utility operations through home equity loans or credit cards.

The difficulty in obtaining external funds can create over dependency on internally generated funds (depreciation and retained earnings) for utility operations. An adequate level of internal funds is especially critical to the financial viability of small utilities. Not only are they needed to attract capital and repay loans and investors, but many utilities rely heavily on these funds just to meet day-

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<sup>1</sup> Paul J. Garfield and Wallace F. Lovejoy, *Public Utility Economics*, (Englewood Cliffs, N.J.: Prentice-Hall, 1964), pp. 414-420.

to-day cash operating needs. The critical importance of generating adequate internal funds becomes apparent when a small utility encounters unexpected repairs and maintenance, or a new regulatory compliance requirement. For some utilities, an entire year's worth of depreciation accruals can be depleted by just one pump replacement.

The problem with traditional regulation arises when a utility has little or no rate base. Many of Florida's small utilities fall into this category due to assets that are nearing the end of their depreciable lives and/or high Contribution-in-Aid-of-Construction levels. Another common reason some utilities have inadequate rate base is that the developer/utility-owner has written off the cost of the utility for federal income tax purposes against the profits from the real estate development. When rate base is low, traditional regulation provides insufficient cash flow through internal funds that the utility needs to maintain financial viability. This raises the issue of whether a different regulatory scheme should be utilized in these cases.

The rate base regulatory model assumes that the business risk of traditional utilities is a function of investment in fixed plant. However, the rate base model is not appropriate in cases where rate base is low and the business risk is related more to operating expenses than investment. Employing the rate base methodology in these cases will produce little or no margin between revenues and expenses, leaving the utility vulnerable in the face of declining revenues, increasing costs, or both.<sup>2</sup> The operating ratio methodology, discussed later in the paper, provides an alternative rate setting approach for low rate base utilities. The operating ratio method has been used in the regulation of motor carrier rates and urban transit companies in recognition that the business risk for these companies is more related to operating expenses than investment in production assets.

#### **E. Geographic Isolation**

Finally, most of the abandonment cases that were studied were located a significant distance from a densely populated area. Most were primarily designed as recreational or retirement communities with proximity to lakes or rivers. Although, in one sense these are idyllic settings, they are poor targets for acquisition by a larger utility and usually present unique environmental challenges. The additional transportation and time costs are an obstacle to a larger utility that is interested in acquiring systems. Proximity to other systems helps to reduce transportation and time costs, and makes systems more attractive as acquisition or interconnection targets.

### ***III. Receiverships***

Chapter 367.165 of the Florida Statutes provides that the utility must give 60 days' notice to the Commission and to the appropriate county before abandonment. The statute places no other requirements on the utility prior to its abandonment. The statute directs the county to petition the circuit court in the judicial circuit in which the utility is located to appoint a receiver. The receiver

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<sup>2</sup> Ibid., p. 25.

may be the governing body of a political subdivision, or any other person the court deems to be appropriate.

The PSC staff contacts the county attorney and the county staff, and in some cases suggests possible receivers. However, the PSC has no binding authority over who is appointed receiver, or for how long, or under what terms the receiver must perform. These terms and conditions are spelled out by the court. However, the receiver will be subject to Chapter 367, Florida Statutes as well as the Florida Department of Environmental Protection (DEP) and Water Management District (WMD) requirements.

The receiver operating the utility is considered to hold a temporary certificate of authorization from the PSC. The receiver also inherits the existing rates, and if those rates are non compensatory, it inherits an immediate cash flow deficit. Generally, the court requires that the owner or abandoning entity must surrender all utility assets and records to the receiver. In some past cases, the owner abandoned the utility but claimed continued ownership of the land under the utility plant facilities. Problems have occurred when the former owner demanded an unreasonable amount of money to lease or sell the land to the receiver or a potential buyer of the abandoned utility. For this reason, the Commission requires that the land upon which the utility is sited is in the name of the utility or under a long term lease.

It is not difficult to appreciate the problem sometimes encountered by the court and the county in locating a willing receiver. In many recent abandonment cases, either the county or another local governmental unit has stepped in to be the receiver. Once the utility is owned, operated, managed, or controlled by a governmental agency, it becomes exempt from regulation by the PSC. The utility would remain in exempt status unless it was subsequently transferred back into private ownership.

#### ***IV. Obstacles Facing Receivers***

##### **A. Cash Flow**

The obstacles facing receivers include all those identified above associated with any small utility as well as several others in addition. The first major item is cash flow. Most abandoned utilities are not covering operating expenses with existing rates and, as noted above, this problem is not quickly rectified. Unfortunately, many receivers step in unaware of regulatory constraints and financially unprepared to deal with persistent cash losses. The receiver steps into the shoes of the utility owner and is expected to rectify any outstanding environmental compliance issues that, incidentally, may have led to the abandonment. The problem is exacerbated by the responsibility to pay regulatory assessment fees (RAF) even though the utility is suffering cash flow difficulties.

##### **B. Filing and Permitting Fees**

Short run regulatory costs, namely filing and permit fees, may present an obstacle to a receiver unaware of these regulatory costs. SARC filing fees may reach \$1000 per service based on the utility's capacity. DEP permitting fees and fees incurred for engineering services related to permitting may easily exceed \$1,000.

### **C. Customer Perception**

Often, the previous owner has deferred maintenance, ignored customer complaints and generally provided substandard service for some time prior to abandonment. This creates an angry and frustrated customer base that believes they have paid for poor service and should not have to endure a rate increase before seeing any improvement in service. A receiver seeking a rate increase will likely be viewed with great hostility. Further, when the rate increase exceeds 100%, common for systems in receivership, customer frustration and resistance can increase significantly.

### **D. Long Term Viability**

A key issue with a receivership utility is whether the utility can achieve long term viability. Substantial rate increases under the best of circumstances are difficult to accept for some customers, but are frequently necessary to give the utility a chance for survival. Even when cash flow is provided through rates to reasonably cover unforeseen near-term operating requirements, survival may be difficult to sustain. Customer resistance to rate increases, as well as changing regulatory requirements continue to challenge the viability of small systems.

Customers understandably protest having to pay double or triple the previous rates when there is no reason to believe there will be quality service and rate stability in the future. In some cases after rate increases, customers have cut their consumption substantially, thereby reducing the utility's cash flow. It is even more devastating to the utility when customers leave the system and drill individual wells, leaving even fewer customers over which to spread the operating costs. In one case some years ago, the decision was eventually made to close down the central water system, forcing customers to drill wells or move from the mobile home park.

If customers are able to initially withstand substantial rate increases to rehabilitate abandoned systems, this will not insulate them from future rate increases to meet ever increasing environmental standards. As systems age and regulatory standards increase, affordability of utility service will likely become a major obstacle for small utilities in maintaining long term viability.

## ***V. Past Efforts to Improve Abandonments / Receiverships***

Prior to 1989 - A joint project was developed by staff from the PSC and the DEP to develop a state wide abandonment trust fund. The concept was to collect a small charge from each water customer throughout the state, such as \$.01 per 1,000 gallons, to be placed in a trust fund administered by the DEP. The fund could be released to receivers to help bring abandoned utilities into compliance with health and safety standards, or to assist in funding interconnection with another



viable utility. This proposal was suggested at the time Chapter 367 was up for sunset review, but was not formally proposed to the Legislature.

1989 - Recognizing that small utilities require unique regulatory solutions, the Commission sought and the Legislature granted the Commission authority to establish alternative forms of regulation. Section 367.0814(9), F.S., allowed the Commission to establish, by rule, non rate base standards and procedures for setting rates and charges.

1993 - Staff again met with the DEP staff to draft proposed legislation on abandonment. The PSC staff focused on requiring an owner who wants to abandon, to relinquish all rights to the property under the utility facilities. The draft legislation also required Commission approval prior to an abandonment taking place. No automatic 60-day provision would be allowed. The draft legislation that was taken to Internal Affairs is shown on Attachment 2. Ultimately, the Commission did not go forward with the proposal, because the DEP would not agree to cosponsor it. DEP was more interested at that time in a "constructive abandonment" statute where both agencies could force a utility that was out of compliance with standards into abandonment, or in other words, force ownership changes. The Commission was not willing to recommend that proposal to the Legislature at that time. In 1993, the Commission did approve Rule 25-30.456, F.A.C., that established non rate base rate setting procedures for utilities with gross annual revenues of \$150,000 or less per system. These procedures provide a remedy for a utility with low or nonexistent rate base to obtain needed cash flow that rate base regulation would not provide. In 1996, the Commission first set rates using an operating ratio methodology in a staff assisted rate case.

1995 - After a record eight abandonments in 1994, the staff spent a considerable amount of time studying the issue in an attempt to improve the regulatory process. A report was prepared, which was summarized above, listing common features that were characteristic of the multiple abandonments that took place in the prior year. Staff also prepared step by step procedures to be followed in future abandonment cases. Staff's recommendation in this regard is included as Attachment 3.

1996 - The Federal Re authorization of the Safe Drinking Water Act was passed in Congress with several provisions that address small water system viability. The Act requires each state's primacy agency (Florida's DEP) to develop a capacity development strategy. Capacity development is the new term which replaces viability assessment, and addresses each water system's ability to obtain financial, managerial, and technical capacity to meet all federal drinking water requirements. The states were given four years to develop their full capacity development strategy. The Florida DEP recently had their proposed strategy approved by the Environmental Protection Agency (EPA). The DEP's capacity development strategy is more fully discussed in another staff paper titled, "Viability: Impact of the Department of Environmental Protection's Capacity Development Program on the Public Service Commission."

1997 - In an attempt to lower one of the barriers to obtaining rate relief for small cash strapped utilities, the staff explored how the PSC could accept a payment plan for the filing fee for Staff Assisted Rate Cases. The PSC entered into a Memorandum of Understanding with the

Department of Banking and Finance dated September 25, 1997 which allows for payment plans for SARCs. The Memorandum is shown on Attachment 4.

1999 - The Commission proposed legislation to specifically authorize interim rates in staff assisted rate cases. The 1999 Florida Legislature approved amendments to Chapter 367 to allow interim rates to a level to cover operations and maintenance expenses with or without security depending on the circumstances.

## ***VI. Recommended Future Agency Actions***

Abandoned systems are usually non viable. System non viability is most often caused by insufficient funding, which can result in neglected maintenance and rehabilitation over many years, and/or the utility's inability to make improvements to meet health and environmental standards. In another paper examining system viability issues, PSC staff suggests that the Commission take a more proactive approach in identifying and providing potentially non viable systems assistance.<sup>3</sup> Staff has also examined acquisition incentives that would promote industry consolidation in order to reduce the number of potentially non viable systems.<sup>4</sup> Both of these papers discuss strategies for early detection and intervention, which are keys to preventing abandonments.

### **A. Implement a Pilot Program**

The staff paper on viability recommends that the Commission implement a pilot program with the goal of improving the condition of PSC regulated utilities that the DEP identifies in its Capacity Development Program as needing assistance. PSC staff would accompany DEP contractors on their on-site visits to PSC regulated utilities to learn more about the condition of those utilities and areas in which assistance can be offered. Staff would also gather and analyze historical data in order to develop "flags" that would indicate current or potential viability concerns for other utilities. The paper also suggests that if the pilot program proves successful, the Memorandum of Understanding between the PSC and the DEP could be updated, adding elements of the program. Staff believes that this pilot program will provide valuable experience in early detection and intervention for utilities in danger of future abandonment.

### **B. Revise Annual Report Surveillance Procedures**

Another approach the commission may want to consider is revising current annual report surveillance procedures to allow staff to notify small utilities with low or negative earnings that staff

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<sup>3</sup> See PSC staff paper, *Viability: Impact of the Department of Environmental Protection's Capacity Development Program on the Public Service Commission.*

<sup>4</sup> See PSC staff paper, *Refocusing on the Commission's Acquisition Policy Regarding Water and Wastewater Utilities.*

assistance is available for obtaining rate relief. The notification would be by letter and could briefly describe the staff-assisted rate case process, index/pass-through filings, and provide the name of a staff member to contact. Some utilities fail to seek any form of rate relief, contributing to their cash flow problems.

**C. Encourage Participation in Annual Workshop**

Staff could make a special effort to get small utility owners and operators to attend the annual water and wastewater educational workshop. At this workshop utilities obtain information on the regulatory process and procedures, including the various programs for obtaining rate relief. Staff could work with the DEP and Florida Rural Water Association to get the word out about the workshop. The Commission might also want to consider giving the utility a credit of some amount against regulatory assessment fees or rate case filing fees for attendance at the workshop. However, this would require changes to Florida Statutes and the Florida Administrative Code.

**D. Expand Application of the Operating Ratio Methodology**

Preventing future abandonments largely depends on utilities maintaining adequate cash flows with which to fund necessary repairs and improvements. As previously noted, rate base regulation often provides insufficient funds to ensure future viability. This is where other rate making techniques can be employed, such as the operating ratio approach. The Commission may want to consider more liberal use of this methodology in order to provide sufficient cash flows to those utilities having small rate bases.<sup>5</sup>

**E. Expedite Receivership Process**

While the above approaches are reasonable first steps to early detection and intervention, they do not address the previously noted obstacles that are encountered when a utility is abandoned. A staff memo recommending procedures that could be followed when a utility is abandoned is shown on Attachment 3. The goals of these procedures are to identify the cause of abandonment, assess the utility's viability, facilitate transfer to a receiver, and help overcome obstacles a receiver faces in taking over a troubled utility.

One of the key recommendations in the memo is that staff should request an expedited audit and engineering analysis immediately upon receipt of an abandonment notice. The information would then be on hand to provide expedited rate relief, including emergency rates, if needed. This would aid in addressing the major problem of inadequate cash flow that receivers inherit.

Staff would also contact the County Attorney, DEP, Water Management District, Office of Public Counsel and any other governmental entity having jurisdiction in the area about the notice

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<sup>5</sup> The Commission has scheduled a workshop for August 8, 2001, on alternative ratesetting for utilities to address the continued use of the operating ratio methodology.

of abandonment. A follow up letter including a copy of the abandonment notice would also be sent. These steps would help expedite the receivership process.

**F. Use the Operating Ratio Methodology in Setting Receivership Rates**

When a receivership does occur, the Commission could use the operating ratio methodology in setting receivership rates. This methodology might be appropriate when there are inadequate records with which to establish rate base, or when rate base is so low that inadequate cash flow would result from traditional rate base regulation. Further, it usually takes less time to complete a case where the operating ratio is used.

**G. Implement Other Innovative Rate Making Approaches**

rate making approaches that would provide quicker rate relief to the receiver. Such approaches might include calculating for immediate implementation an average statewide or countywide rate, or perhaps the rate could be calculated on an average of the rates set in the latest SARCs. There are other options, such as basing rates on similar size utilities or utilities with the same treatment/disposal method, but, whatever approach is used, the rates could be made subject to refund after the receiver is appointed. This would provide necessary funds for operating the utility while a rate case is being processed.

**H. Lower or Eliminate SARC Filing Fees for Receivers**

As previously noted, filing and permitting fees are other obstacles receivers encounter. In most cases, a receiver takes over a utility that is not able to cover its operating expenses much less additional fees and fines that may be pending. While this Commission may not be able to influence DEP permitting fee levels, it may want to consider lowering or eliminating SARC filing fees to relieve receivers of this additional burden. Elimination or waiver of rate case filing fees for receivers would require statutory change, whereas lowering the fees might require only a rule change.

**I. Consider Legislation to Establish an Abandonment Trust Fund**

As previously noted, in the late 1980s the Commission and the DEP discussed establishing an abandonment trust fund. The concept was to collect a small charge from each water customer throughout the state, such as \$.01 per 1,000 gallons, to be placed in a trust fund. The fund could be released to receivers to help bring abandoned utilities into compliance with health and safety standards, or to assist in funding interconnection with another viable utility. The Commission could consider renewed discussions with both the DEP and the WMDs to establish a trust fund. While the mechanics of the fund would take additional study, the scope of the fund could be expanded to include both conservation and reuse activities. Also, additional funding could come from a percentage of fines paid by utilities to either the Commission or the DEP and/or from over earnings generated by commission regulated utilities.

## ***VII. Conclusion***

Abandonments require significant remedial efforts on the part of the PSC, environmental regulators, county governments and the courts; therefore, it is to the collective advantage of these agencies to reduce the number of abandonments. The keys to preventing abandonments are early detection and intervention. A cooperative effort between the PSC and DEP will be needed in order to implement effective strategies for early detection and intervention. The pilot program and procedures suggested in this and other staff papers address interagency coordination and ways to identify and assist potentially non viable systems. These efforts will likely require additional staffing at the Commission.

The majority of abandonments involve small utilities that often exhibit similar characteristics. The most common and devastating of these characteristics are inability to generate internal funds through depreciation and earnings, and inability to attract capital from external sources. Sufficient internal cash flow is needed for any business entity to remain financially sound. Water and wastewater utilities are no different; however, in many cases, traditional rate base rate setting is unable to provide these cash flows. Therefore, non-traditional rate setting methods are needed to address the critical cash flow needs of utilities that may be at risk of future abandonment.

However, even with the best regulatory efforts, the Commission will continue to deal with receiverships. Therefore, it is important not to overlook the factors that lead to the abandonment and the obstacles that a receiver encounters upon taking over an abandoned utility. By stepping into the shoes of the utility owner, the receiver inherits all the problems that may have led to the abandonment along with the responsibility to rectify them. The receiver faces additional obstacles in obtaining regulatory approvals and sufficient rates that will enable the utility to survive. This paper suggested several changes in regulatory policy designed to lighten the burden on receivers and improve the chances for abandoned utilities to become viable business entities. Interagency cooperation will also be needed in order to achieve these goals. The Commission may want to initiate these interagency efforts.

VIII. Attachments

- Attachment 1** Abandonment Dockets 1992-2000
- Attachment 2** Draft Legislation- Chapter 367.165, F.S.
- Attachment 3** Staff Memo: Proposed Abandonment/ Receivership Procedures
- Attachment 4** Memorandum of Understanding with Florida Department of Banking and Finance.

**ABANDONMENTS**

<b>DOCKET NO.</b>	<b>COMPANY</b>	<b>COUNTY</b>
<b><u>2000</u></b>		
000242-WS	Enterprise Utilities Corporation	Volusia
000292-WS	DeBary Associates, Inc.	Volusia
000363-WS	Skyview Utilities, Receivership	Polk
<b><u>1999</u></b>		
991206-WS	Springside at Manatee, Ltd.	Levy
<b><u>1998</u></b>		
None		
<b><u>1997</u></b>		
971635-SU	RHV Utility, Inc.	Citrus
<b><u>1996</u></b>		
960802-WU	Manatee Utilities, Inc.	Levy
960800-SU	Weber Investment Corporation	Putnam
<b><u>1995</u></b>		
951026-WS	J & J Water and Sewer Corporation	Citrus
951038-SU	Hacienda Treatment Plant, Inc.	Lee
<b><u>1994</u></b>		
941331-WS	Pine Island Utility Corporation	Volusia
941330-WU	Landis Enterprises, Inc.	Putnam
941329-WU	Landis Enterprises, Inc.	Alachua
941178-WS	Harbor Utilities Company, Inc.	Lee
941122-WU	Manatee Utilities	Levy
940855-WU	Forty Eight Estates	Levy
940627-WU	Blanton Lake Park Utilities Company	Pasco
940222-WU	Southeastern States Utilities, Inc.	Palm Beach
<b><u>1993</u></b>		
930135-SU	SCE Services	Pasco
<b><u>1992</u></b>		
921131-WU	PBV Corporation	Putnam
921103-WU	University Oaks Water System	Levy
920963-SU	L.C.M. Sewer Authority	Lee

STAFF DRAFT  
9/20/93

\*367.165 Abandonment.

It is the intent of the Legislature that water or wastewater service to the customers of a utility not be interrupted by the abandonment or placement into receivership of the utility. To that end:

(1) For purposes of this section:

(a) Abandonment shall mean and constitute the surrender, relinquishment, disclaimer, or cession of any property interests or of any rights to all utility property, real and personal; and,

(b) Utility operator shall mean any person, lessee, trustee, or receiver owning, operating, managing, or controlling a utility.

~~(2) No utility operator person, lessee, trustee, or receiver owning, operating, managing, or controlling a utility shall abandon the utility without prior commission approval. Such approval shall be timely granted upon the commission's finding that the requirements of this section have been met giving 60 days' notice to the county or counties, in which the utility is located and to the commission. Anyone who violates the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day of such abandonment constitutes a separate offense. In addition, such act is a violation of this chapter, and the commission may impose upon the utility a penalty for each such offense of not more than \$5,000 or may amend, suspend, or revoke its certificate of authorization; each day of such abandonment without prior approval~~



1 ~~notice~~ constitutes a separate offense.

2 (3) The utility operator shall give written notice to the  
3 county or counties in which the utility is located, the Department  
4 of Environmental Protection and its delegated local program, if  
5 applicable, the water management district, and the commission of  
6 its intent to abandon the utility.

7 (4~~2~~) After receiving such notice, the county, or counties acting  
8 jointly if more than one county is affected, shall petition the  
9 circuit court of the judicial circuit in which such utility is  
10 domiciled to appoint a receiver, which may be the governing body of  
11 a political subdivision or any other person deemed appropriate.  
12 The receiver shall operate the utility from the date of abandonment  
13 until such time as the receiver disposes of the property of the  
14 utility in a manner designed to continue the efficient and  
15 effective operation of utility service.

16 (5) Upon appointment of a receiver by the circuit court, all of  
17 the books and records of the utility operator shall be transferred  
18 to the receiver.

19 (6) The Legislature finds that the public interest requires a  
20 utility to have ownership or continued use of the land upon which  
21 the utility is located. If the land upon which the utility's  
22 facilities are located is not in the name of the utility, it shall  
23 be the abandoning utility owner's responsibility to provide for the  
24 long-term, continued use of the land by the subsequent utility  
25 operators at reasonable terms.

CODING: Words underlined are additions; words in  
~~struck-through~~ type are deletions from existing law.

1 (73) The notification to the commission under subsection (31) is  
2 sufficient cause for revocation, suspension, or amendment of the  
3 certificate of authorization of the utility as of the date of  
4 abandonment. The receiver operating such utility shall be  
5 considered to hold a temporary authorization from the commission,  
6 and the approved rates of the utility shall be deemed to be the  
7 interim rates of the receiver until modified by the commission.

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CODING: Words underlined are additions; words in  
~~struck-through~~ type are deletions from existing law.



# Public Service Commission

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

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DATE: March 24, 1995  
TO: Charles H. Hill, Director  
FROM: Abandonment/Receivership Committee (McRoy, Casey, Edmonds)  
RE: Proposed Abandonment/Receivership Procedures

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Per your request, the Abandonment Committee submits the following recommendations for your review:

### UPON RECEIPT OF THE NOTICE OF ABANDONMENT:

- 1) Prepare a CASR noting the 60 day appointment of a receiver. The abandonment committee suggests legal should be OPR on all abandonments with certification and an analyst and engineer from the appropriate bureau (Special Assistance, Bureau of Economic Regulation) as OCR. Team coordination is a must! Also, extend the CASR out from the initial filing date 4 to 6 months for completion.
- 2) OCR analyst, from the appropriate bureau, should immediately request an expedited (workload permitting) staff audit and engineering analysis. The purpose would be to secure current reliable data to: 1) attempt to verify the cause of the abandonment, 2) conduct a viability analysis and 3) have necessary information at hand in the event the receiver, when appointed, files for a SARC.
- 3) Contact, by phone, the County Attorney, Department of Environmental Protection (DEP), Water Management District (WMD), Office of Public Counsel (OPC), and any other governmental entity having jurisdiction in the area about the notice of abandonment. Follow up the phone contact with a letter including a copy of the Notice of Abandonment filed with the Commission.
- 4) Require any utility being abandoned to provide the address of all its existing customers when filing for notice of abandonment. This would require a change to Rule 25-30.090, Florida Administrative Code. Also require utilities to provide customer addresses on annual reports.
- 5) If no receiver is found within the 60 day Notice of Abandonment, require the appropriate county to assume operational responsibility or receivership. This would require a change to Section 367.165, Florida Statutes.
- 6) CUSTOMER NOTIFICATION:
  - A) Notify the customers, by letter, that 1) the utility is in the process of

being abandoned 2) a customer meeting will be conducted by the PSC in the utility's service area (to insure maximum customer participation) after appointment of a receiver and that DEP, the WMD and OPC have been invited, 3) a PSC audit and engineering analysis is being performed 4) a viability analysis will be completed with the results addressed at the customer meeting and 5) a staff member in Water and Wastewater will be the customer liason for the abandonment to answer any questions. Notice of the customer meeting should be provided no less than 14 days and no more than 30 days prior to the date of the meeting, pursuant to Rule 22.0407(9)(a), F.A.C.

OR

- B) Meet with customers of the abandoned utility (Using the same noticing requirements outlined in paragraph 6A) and answer questions regarding the utility's existing and future condition. Representatives from the County, DEP, WMD, OPC, and any other governmental entity having jurisdiction in the area should be present. Inform the customers that a staff audit and engineering analysis is being performed and a viability assessment study will be conducted on the utility with the results being addressed at a subsequent customer meeting after the appointment of a receiver.
- 7) Request the Viability Committee develop a Viability Assessment Study of the abandoned utility.

**APPOINTMENT OF A RECEIVER:**

- 8) Meet with the County regarding the appointment of the receiver. Provide the potential receiver with current tariff and annual report information. Disclose any current problems which may adversely affect the receiver.
- 9) Attend the court hearing where the receiver is appointed. Answer any questions concerning the utility or Public Service Commission regulation.
- 10) Upon receipt of the court order appointing a receiver, set up a meeting with the receiver to discuss the results of the viability assessment and attempt to determine what the receiver's plans are for the utility (rate relief, merger, acquisition, consolidation, coop election).
- 11) Prepare a Recommendation for Agenda to acknowledge appointment of the receiver.
- 12) Upon issuance of a Final Abandonment Order, insert a page in the utility tariff with the receiver's name and address.
- 13) Conduct a customer meeting to discuss the result of the Viability assessment study and notify customers who the court appointed receiver is. Again, representatives from the County, DEP, WMD, OPC, and any other governmental entity having jurisdiction in the area along with the receiver should be present. In this meeting all available options recommended by the study should be addressed. Notice of the customer meeting should be

provided no less than 14 days and no more than 30 days prior to the date of the meeting (See paragraph 6A above).

## SOLUTIONS:

### RATE RELIEF:

- 14) **SHORT TERM:** If the receiver requests a SARC with emergency rate relief, and the viability analysis shows a SARC will make the utility viable, close the abandonment docket and open a SARC docket, preparing a CASR which includes an Agenda for emergency rates ASAP. Since the audit and engineering analysis have already been completed, emergency rates, including receiver fees, could conceivably go in to effect within a couple weeks (workload permitting) of the receiver being appointed, provided proper security is submitted. If immediate capital improvements are required for the health and safety of the customers, consider a customer surcharge. Final rates could be expedited 60-90 days (workload permitting) since the staff audit and engineering analysis are complete. Monitor "Accrued Receiver Losses" from the date of SARC filing, include them in the SARC, amortizing them over 4 years just as the filing fee. Waive, reduce or put the SARC filing fee on a payment plan for the receiver to aid the cash flow of the utility (This would require a change to Rule 25-30.455(9), F.A.C. and may require changes to Section 367.145, F.S. and Rule 25-30.020(2)(f), F.A.C.). If a SARC will not make the utility viable, close the abandonment docket and encourage the receiver to pursue an acquisition, merger, consolidation or coop election.

**LONG TERM:** Pursue, through legislation, an expedited rate case for Class C utilities using an operating ratio formula or some other means of reducing the analyses needed for rate relief in order to reduce regulatory lag.

### ACQUISITION, MERGER, CONSOLIDATION, COOP ELECTION:

- 15) Follow procedures outlined in 25-30.037, Florida Administrative Code (Application for Authority to transfer) or 25-30.060, Florida Administrative Code (Application for Exemption from Regulation or Nonjurisdictional Finding).

### CONCLUSION:

Determine what recommendations should be adopted and revise S.O.P. 1010, Abandonment and Bankruptcy Proceedings, initiate a new S.O.P. outlining responsibilities for each bureau and proceed with any changes necessary in the Rules or Statutes.

**MEMORANDUM OF UNDERSTANDING****FLORIDA DEPARTMENT OF BANKING AND FINANCE****AND****FLORIDA PUBLIC SERVICE COMMISSION**

The Florida Department of Banking and Finance (DBF) and the Florida Public Service Commission (PSC) recognize that agencies are required to exercise due diligence to secure full payment of agency accounts receivable. The PSC regulates certain investor-owned water and wastewater utilities within the state. The DBF is ultimately responsible for collecting monies owed to the State of Florida. The DBF has authority to approve settlement agreements and payment plans addressing monies owed to the State. This memorandum of understanding (MOU) establishes the circumstances under which the DBF will allow the PSC to approve payment plans for staff assisted rate case applications filed pursuant to Section 367.0814, Florida Statutes (F.S.).

**BACKGROUND**

Section 367.0814, F.S., allows a utility with gross revenues of \$150,000 or less to request and obtain staff assistance for the purpose of changing its rates and charges. Pursuant to Section 367.0814(2), Florida Statutes, a utility that requests such assistance must remit a filing fee in accordance with Section 367.145, F.S. Section 367.145(2), F.S., provides that applicants for staff assisted rate cases must remit an application fee established by the Commission. According to PSC Rule 25-30.020(2)(f), Florida Administrative Code, the filing fees for a staff assisted rate case are as follows: for utilities with the existing capacity to serve up to 100 Equivalent Residential Connections (ERCs), \$200; for utilities with the existing capacity to serve from 101 to 200 ERCs, \$500; for utilities with the existing capacity to serve more than 200 ERCs, \$1,000.

**OBJECTIVES**

The common objectives, as they relate to the authorization of payment plans for staff assisted rate case applicants, are as follows:

1. To ensure that the State receives the entire appropriate filing fee from staff assisted rate case applicants;
2. To ensure that staff assisted rate case applicants are provided a reasonable method of paying the filing fee, through the establishment of payment plans where needed, without delaying needed rate relief.

**AGREEMENT**

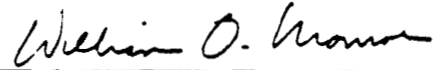
The DBF agrees that the PSC may approve payment plans for staff assisted rate case filing fees

upon an applicant's written request and demonstration of good cause. If the duration of the payment plan does not exceed eight months from the official filing date and if the total amount of filing fee is not greater than \$1,000 per service, the DBF agrees that no specific authorization from DBF is required for the payment plan. The PSC agrees that in all other circumstances, specific approval for payment plans is required from the DBF.

This agreement will become effective with the last signature.



William D. Talbott  
Executive Director,  
Public Service Commission



William O. Monroe, Director  
Division of Accounting and Auditing,  
Department of Banking and Finance

9/25/97

Date

8-28-97

Date