BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in Citrus County by RHV Utility, Inc.	DOCKET NO. 961220-SU ORDER NO. PSC-98-1105-FOF-SU ISSUED: August 20, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER PERMANENTLY SUSPENDING FINE, DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS, CANCELING CERTIFICATES, AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

RHV Utility, Inc. (RHV or utility) is a Class C wastewater utility located near the City of Homosassa in Citrus County. The utility provides wastewater service to approximately 402 residential customers and 4 general service customers (Riverside Villas/Yardarm Restaurant, a 32 unit condominium complex known as Sportsman's Lodge, K.C. Crumps restaurant, and a recreation club house). The Homosassa Association, a non-jurisdictional utility, provides water service to the utility's service area.

By Order No. 24937, issued August 20, 1991, in Docket No. 900967-SU, RHV was granted a general rate increase, including pro forma additions. The purpose of these additions was to meet the Department of Environmental Protection's (DEP) mandated repairs and to attempt to have the growth moratorium on the service territory lifted. To date, the DEP has not given the utility an operating permit, and the growth moratorium is still in effect.

On June 20, 1994, RHV applied for another staff-assisted rate proceeding. At this time, the utility stated that the major reason for applying for a rate increase was to recover some of the cost of

plant improvements required by the DEP. A general rate increase was granted by Order PSC-95-0961-FOF-SU, issued August 7, 1995, in Docket No. 940655-SU. The increase did not include any provision for necessary improvements, as the utility failed to provide sufficient supporting evidence for planned additions of plant in service. In this rate case, we approved an increase in rates of approximately 6%. Considering the fact that the utility has never filed for an index or pass-through increase, the result of this rate case was to merely true rates for inflationary increases in cost. The problems of necessary plant improvements were not addressed.

Citing the same reasons as those used in prior rate cases, that of recouping the costs of plant improvements required by the DEP, the utility filed its most recent rate case on October 10, 1996. RHV's 1996 annual report lists total unaudited gross revenues of $116,927, with a net operating loss of $50,003. By Order No. PSC-97-0854-FOF-SU, issued July 16, 1997, in Docket No. 961220-SU, we granted the utility a 40% increase in its rates, a majority of which was allowed to pay for pro forma improvements necessary to bring the system into compliance with DEP standards.

In addition to the rate increase, we ordered the utility to show cause within 20 days of the Order why it should not be fined $5,000 for failing to comply with Section 367.111(2), Florida Statutes, by not providing satisfactory service which meets the standards promulgated by the DEP. On August 14, 1997, the utility submitted a letter requesting a sixty day extension of time to respond to the show cause Order. By Order No. PSC-97-1477-PCO-SU, issued November 24, 1997, we imposed the $5,000 fine after determining that the utility's request for an extension of time to file a response to the show cause order was both untimely and inappropriate. However, given the utility's progress in attempting to bring itself back into compliance with the DEP's standards and the subsequent involvement by the Circuit Court of the Fifth Judicial Circuit of the State of Florida, in and for Citrus County (Circuit Court or Court), we found it appropriate to allow the utility additional time to satisfy the Court's mandates and suspended the $5,000 fine for a period of six months.

During this time, Citrus County made petition to the Circuit Court for intervention and to be appointed the receiver for the utility. On November 24, 1997, the Court issued an order in Case No. 97-1872-CA which effectively declared the utility abandoned by the appointment of Citrus County as receiver of the utility's

assets. Case No. 97-1872-CA was an enforcement action brought by the DEP against RHV for long-term failure to bring its wastewater system into environmental compliance. The Circuit Court appointed the County receiver after having been advised by RHV that it had found no buyer for the utility and that it otherwise had no financial means to respond to the previous orders of the Circuit Court with respect to the enforcement action.

Based on discussions at a December 18, 1997 meeting attended by Citrus County officials, Commission staff, the DEP, and RHV's customers, the County decided it was in the best interests of the ratepayers of Riverhaven Village for the County to operate the utility as an exempt entity pursuant to Section 367.022(2), Florida Statutes. By letter dated December 19, 1997, the County served official notice of its intention to do so. By Order No. PSC-98-0474-FOF-SU, issued April 1, 1998, in Docket No. 971635-SU, we acknowledged the appointment of Citrus County as receiver and the County's exempt status. On June 3, 1998, the Court ordered the sale of the utility's assets to the County within thirty days. Presently, the County is in the process of obtaining ownership of the utility's property.

PERMANENT SUSPENSION OF FINE

As stated earlier, in Order No. PSC-97-0854-FOF-SU, issued July 16, 1997, we ordered RHV to show cause within 20 days why it should not be fined $5,000 for failing to comply with Section 367.111(2), Florida Statutes, by not providing satisfactory service which meets the standards promulgated by the DEP. By Order No. PSC-97-1477-PCO-SU, we imposed the $5,000 fine after determining that the utility's request for an extension of time to file a response to the show cause order was both untimely and inappropriate. However, given the utility's progress in attempting to achieve compliance with the DEP's standards and the subsequent involvement by the Circuit Court, we found it appropriate to allow the utility additional time to satisfy the Court's mandates and suspended the $5,000 fine for a period of six months.

On November 24, 1997, the Circuit Court issued an Order that granted intervention and receivership of RHV Utility, Inc. by Citrus County. In its order, the Court indicated that the utility did not have the financial means with which to correct the effluent problems at the wastewater plant and that the utility had not secured a buyer with the financial wherewithal necessary to bring the plant into compliance with DEP standards. The Court ordered

Citrus County to begin operating the plant and for ratepayers to make utility payments directly to Citrus County.

During the six-month extension we granted to the utility, the DEP and Citrus County, as receiver, have been negotiating an agreement to achieve compliance with the DEP's standards. Although a consent order agreement between the County and DEP has not yet been reached, a compliance schedule is being worked out between them in reference to infiltration and inflow investigation and repairs to the collection system, liftstation rehabilitation, shutdown of the wastewater treatment facility with a planned interconnection to the County's system, and repair or replacement of the subaqueous force main under the Homosassa River. The completion of these projects could take as long as three and a half years.

On June 3, 1998, the Court issued another Order approving the receiver's report and directing the sale of RHV's assets to Citrus County. The Order states that a meeting occurred on March 12, 1998 between the utility, Philip Utility Management, the DEP and Citrus County. At this meeting, no agreement could be reached as to a plan of action for correcting the effluent problems at the plant or a plan of action for the acquisition of the utility by another party. Based on the lack of results at this meeting and concern by the court over the "continuing pollution and degradation of the environment surrounding," the sale of the utility to Citrus County was ordered. Furthermore, the Order states that a DEP compliance proposal presented by the County in its Receiver's Report to the Court will result in the ultimate elimination of all pollution problems. Presently, Citrus County is working on obtaining clear ownership of the utility's property, upgrading the collection system, and maintaining and operating the wastewater treatment facility.

Based on the foregoing, we believe the County has developed a plan and the appropriate steps are being taken to finally bring this utility back into compliance with DEP standards. In light of this, along with the fact that the utility now has been sold to the County, we find it appropriate to permanently suspend the $5,000 fine imposed upon the utility by Order No. PSC-97-1477-PCO-SU.

SHOW CAUSE - REFUND REQUIREMENT

In Order No. PSC-97-0854-FOF-SU, issued July 16, 1997, after reviewing RHV's customer deposits, we determined that certain customer deposits were being held in violation of the 23-month maximum period set forth in Rule 25-30.311, Florida Administrative Code. Accordingly, we ordered RHV to make the appropriate refunds of $1,635 with interest by granting credits to the customers within 90 days of the date of the Order and required the utility to file a refund report similar to that required in Rule 25-30.360(7), Florida Administrative Code. To date, the refunds have not been made.

Section 367.161(1), Florida Statutes, authorizes the 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 provision of Chapter 367, Florida Statutes, or any lawful rule or order of the Commission: Each day that such refusal or violation continues constitutes a separate offense.

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 comply with a Commission order, 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.

Although the utility appears to have violated the refund requirement of Order No. PSC-97-0854-FOF-SU, we do not believe that further action by this Commission or imposition of a fine will achieve present compliance or promote future compliance. The utility, whose assets are outweighed by its liabilities, has been ordered by the Court to be sold to Citrus County for $1, and the shareholders have lost all equity in the utility. Accordingly, we believe further fines and/or administrative action would be

counter-productive. In addition, as explained in more detail below, the County has indicated that it intends to satisfy the refund obligation, but that it will be disposed of in a manner prompted by the lack of documentation regarding the deposits.

During the course of this rate case, our staff made repeated attempts to secure the records that detailed which customers of the utility were owed a refund of their deposit. The records supporting the $1,635 in deposits could not be found, and the utility accountant was unable to ascertain who was owed a refund. When Citrus County was contacted regarding the unresolved issue of the customer deposits, the County indicated that in accordance with the Court-ordered sale of the utility, the County is required to:

> publish notice to creditors for four consecutive weeks in a newspaper of general circulation in Citrus County stating that all claims with respect to RHV Utility, Inc. shall be filed with the receiver, Citrus County, on or before September 1, 1998.

Given the lack of documentation with which to make the refunds, Citrus County has indicated that it intends to dispose of the outstanding customer deposit refund obligation along with other obligations of the utility under the above-quoted claims procedure. Citrus County has assured us that it will make every attempt to refund legitimate claims for utility deposits, and based on this assurance, we believe repeated publication of a call for creditors of the utility will provide those customers owed a refund a fair opportunity to make a claim. While we are not completely satisfied that this methodology will result in the proper refunding of the $1,635 in deposits and accrued interest that are owed to the ratepayers, we see no other remedy to this situation given the poor record keeping by the utility.

Therefore, in light of the foregoing, we find that the utility's apparent violation of Order No. PSC-97-0854-FOF-SU by not having refunded customer deposits held in violation of the 23-month maximum period set forth in Rule 25-30.311, Florida Administrative Code, does not rise to the level of warranting the issuance of a show cause order. Accordingly, a show cause proceeding shall not be initiated against RHV for failure to comply with the refund requirements of Order No. PSC-97-0854-FOF-SU.

SHOW CAUSE - ESCROW REQUIREMENT

Given RHV's history of failing to keep its repetitive assurances that improvements would be made and that utility maintenance would be improved, in Order No. PSC-97-0854-FOF-SU we required the increased revenues associated with the completion of pro forma additions to be escrowed and our staff to have a role in the disbursement of funds from this account. The pro forma additions that were allowed in the last rate case amounted to $174,283, all of which were necessary to bring RHV into compliance with the DEP mandates. The utility was ordered to deposit in the escrow account, each month, the amount of $1,704, and the utility was not allowed to withdraw any of these funds without prior approval of our staff who was to confirm the completion of the approved pro forma additions. The amount to be escrowed each month was calculated as follows:

Pro Forma Additions	$174,283
Rate of Return	10.77%
Revenue Associated With Pro Forma	$ 18,770
Depreciation Associated With Pro Forma	$ 796
Regulatory Assessment Fees Associated With Pro Forma	$ 880
Income Associated With Pro Forma	$ 20,446
Months In Year	12
Amount To Be Escrowed Monthly	$ 1,704

According to the former accountant for the utility, the escrow account was never opened, and no monies were ever deposited. Accordingly, the utility's failure to escrow the increased revenues is an apparent violation of Order No. PSC-97-0854-FOF-SU.

As stated previously, Section 367.161(1), Florida Statutes, authorizes the 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 provision of Chapter 367, Florida Statutes, or any lawful rule or order of the Commission.

If the utility had escrowed $1,704 each month from the time the Order was issued on July 16, 1997 until the time Citrus County

was appointed as receiver on November 24, 1997, the account balance would have been $6,816. According to invoices submitted for this period of time, the following pro forma repairs have been made:

Master Lift Stations	$15,672
Lift Station Rehabilitation	12,000
Inflow and Infiltration Study	10,000
Total	$37,672

Therefore, while the escrow deposits were not made, the repairs that were to be funded by the escrow were completed, and they exceeded the amount that would have been deposited had the Order been followed. Accordingly, we find that the utility's apparent violation of Order No. PSC-97-0854-FOF-SU in failing to escrow the increased revenues does not rise to the level of warranting the issuance of a show cause order. Accordingly, a show cause proceeding should not be initiated against RHV for its failure to comply with the escrow requirement of Order No. PSC-97-0854-FOF-SU.

Because no further action is required in this matter, Certificate No. 429-S is hereby canceled, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the $5,000 fine imposed upon RHV Utility, Inc. by Order No. PSC-97-1477-PCO-SU is hereby permanently suspended. It is further

ORDERED that a show cause proceeding shall not be initiated against RHV Utility, Inc. for failure to comply with the refund requirements of Order No. PSC-97-0854-FOF-SU. It is further

ORDERED that a show cause proceeding shall not be initiated against RHV Utility, Inc. for its failure to comply with the escrow requirement of Order No. PSC-97-0854-FOF-SU. It is further

ORDERED that Certificate No. 429-S is hereby canceled. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 20th day of August, 1998.

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BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.