



# Public Service Commission

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

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JUN - 4 1998

**DATE:** JUNE 4, 1998

11:35  
FPSC Records/Reporting

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF LEGAL SERVICES (REYES, FLEMING)  
DIVISION OF WATER AND WASTEWATER (GROOM)

*Handwritten initials: BK, SRF, JAF, SA, BB*

**RE:** DOCKET NO. 971635-SU - NOTICE OF ABANDONMENT OF WASTEWATER SYSTEM IN CITRUS COUNTY BY RHV UTILITY, INC.  
COUNTY: CITRUS

**AGENDA:** 6/16/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** 90 DAY STATUTORY TIME LIMIT - JULY 2, 1998

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\971635.RCM

### CASE 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 in Riverhaven Village and 4 general service customers. The Homosassa Special Water District provides water service to the utility's service area. RHV's 1996 annual report lists total gross revenues of \$116,927 with a net operating loss of \$50,003.

On November 24, 1997, the Circuit Court of the Fifth Judicial Circuit of the State of Florida, in and for Citrus County (Circuit Court or Court) issued an order in Case No. 97-1872-CA which effectively declared the utility abandoned by the appointment of Citrus County (County) as receiver of the utility's assets. By letter dated December 19, 1997, the County served notice of its intention to operate the system as an exempt entity pursuant to Section 367.022(2), Florida Statutes. The Commission acknowledged

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the abandonment of the utility and the appointment of Citrus County as receiver by Order No. PSC-98-0474-FOF-SU, issued in this docket on April 1, 1998. Pursuant to Section 367.022(2), Florida Statutes, the utility is exempt from PSC regulation while it is being operated by the county.

On March 21, 1997, the utility filed its 1994 and 1995 annual reports. These reports were due on March 31, 1995 and 1996, respectively, resulting in penalties accruing pursuant to Rule 25-30.110(7), Florida Administrative Code. By letter dated January 12, 1998, the utility was notified that the total penalty for failure to timely file the annual reports was \$3,231.00. On April 7, 1998, Citrus County, as receiver for the utility, filed a petition requesting waiver of Rule 25-30.110(7), Florida Administrative Code, requiring the penalties for failure to timely file the annual reports. This recommendation addresses this petition for rule waiver.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant RHV Utilities, Inc.'s petition for waiver of Rule 25-30.110(7), Florida Administrative Code?

**RECOMMENDATION:** Yes, the Commission should grant RHV Utilities, Inc.'s petition for waiver of Rule 25-30.110(7), Florida Administrative Code, because the petition meets the requirements of Section 120.542, Florida Statutes. (FLEMING, REYES)

**STAFF ANALYSIS:** As stated in the case background, pursuant to Rule 25-30.110, Florida Administrative Code, Commission staff requested that the utility pay \$2,163.00 in penalty fees for filing a delinquent 1994 annual report and \$1,068.00 in penalty fees for filing a delinquent 1995 annual report. The utility seeks a waiver because it believes the underlying purpose of the statute has been served in that the utility filed its 1994 and 1995 annual reports on March 21, 1997. Staff determined that the utility's 1994 and 1995 annual reports were not deficient, thus, the reports were in compliance with Rule 25-30.110(6), Florida Administrative Code.

Section 120.542(7), Florida Statutes, requires the Commission to grant or deny a petition for waiver within 90 days of its receipt. As stated earlier, Citrus County, as receiver for RHV, filed a petition for waiver of Rule 25-30.110(7), Florida Administrative Code, on February 25, 1998. The petition as filed was found to be deficient, and on April 3, 1998, an amended petition was filed. Staff found no deficiencies in the amended petition. Therefore, the Commission must grant or deny the petition by July 2, 1998, pursuant to Section 120.542(7), Florida Statutes.

Pursuant to Section 120.542(6), Florida Statutes, on March 11, 1998, the Commission provided notice to the Department of State, which published notice of the rule waiver petition in the Florida Administrative Weekly, and the Commission received no comments during the 14-day comment period.

Section 120.542(2), Florida Statutes, in pertinent parts, provides that "variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and that application of the rule would create a substantial hardship or violate principles of fairness. For purposes of this section, substantial hardship means a demonstrated

economic, technological, legal, or other type of hardship to the person requesting the variance or waiver."

The underlying statutes which Rule 25-30.110, Florida Administrative Code, implements are Sections 367.121(1)(c), and 367.161(2), Florida Statutes. Section 367.121, Florida Statutes, provides that the Commission shall require regular reports from utilities under its jurisdiction consistent with the uniform system and classification of accounts and may require preparation of the reports by a certified public accountant. Rule 25-30.110(3)(a), Florida Administrative Code, which requires utilities subject to the Commission's jurisdiction to file an annual report on or before March 31 of the following year, implements Section 367.121, Florida Statutes. The purpose of requiring annual reports is to enable the Commission to calculate regulatory assessment fees, as well as to determine if the utility is in an overearnings position.

Section 367.161(2), Florida Statutes, provides that the Commission has the power to impose penalties on utilities under its jurisdiction who have refused to comply or wilfully violate Florida Statutes, Commission rules, or orders. Rule 25-30.110(7), Florida Administrative Code, which provides for penalties of \$3.00 per day for a Class C utility for failure to timely file its annual report, implements Section 367.161, Florida Statutes. The purpose of requiring payment of penalties for the late filing of annual reports is to promote future compliance with Florida Statutes and Commission rules.

As required by Section 120.542, Florida Statutes, RHV provided a statement explaining why the purpose of the underlying statute would be achieved by the utility's requested rule waiver. RHV alleges that the purposes of the underlying statutes have been achieved. First, the utility submitted its 1994 and 1995 annual reports on March 21, 1997, and staff can adequately calculate the regulatory assessment fees of this utility and determine if it is in an overearnings position. Additionally, the necessity of filing future reports no longer exists, because the utility is no longer regulated by the Commission. Hence, there is no future compliance which would be promoted through the imposition of the penalties.

Upon review of the petition, staff believes that RHV has adequately demonstrated that the purposes of the underlying statutes have been achieved. The utility has complied with the rule by providing the delinquent annual reports so staff can calculate the regulatory assessment fees of this utility and assess the utility's earnings level.

Furthermore, staff believes the utility has demonstrated that the application of the rule will create a substantial hardship to the utility. An examination by the County of the books and records of RHV show that the utility is virtually bankrupt with debts exceeding \$250,000.00 and a monthly income of less than \$12,000.00, most of which is necessary to pay regular operating expenses. Therefore, the utility does not have the funds available to it in order to remit \$3,231.00 in penalties. The County also alleges that the imposition of penalties would only penalize the utility customers since they are already paying for debts, operating expenses and necessary repairs required by the Florida Department of Environmental Protection (FDEP).

In addition, staff notes that the Commission has an open docket relating to a staff-assisted rate case for this utility (Docket No. 961220-SU). A recommendation is forthcoming in Docket No. 961220-SU to address and conclude all outstanding matters related to that docket. Some of the outstanding issues in that docket relate to service violations with the FDEP, which will require plant improvements and probably an interconnection with the County's facilities. In staff's opinion, this utility's limited assets should be used to make the improvements necessary to correct the FDEP violations.

Based on the foregoing, staff believes that RHV has met the statutory criteria set forth in Section 120.542, Florida Statutes, and recommends that the Commission grant RHV's petition of waiver of Rule 25-30.110, Florida Administrative Code.

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

**RECOMMENDATION:** Yes. This docket should be closed if no person whose interests are substantially affected by the proposed action files a protest within the 21-day protest period. (FLEMING, GROOMS)

**STAFF ANALYSIS:** This docket should be closed if no person whose interests are substantially affected by the proposed action files a protest within the 21-day protest period.