



Public Service Commission

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

DATE: March 27, 2000

TO: Division of Records and Reporting

FROM: Patricia Brady, Division of Water and Wastewater

pb is sm JW

RE: Request to Establish Docket

Attached is a request to establish a docket to acknowledge the appointment of Polk County as substitute receiver for Skyview Utilities Receivership and the cancellation of Certificates Nos. 596-W and 511-S. For purposes of MCD, Palmer Davis should now be the primary contact for the utility at the address, phone number and fax number shown. Thanks.

Attachment

cc: Division of Water and Wastewater (Daniel, Snipe)
Division of Legal Services (Cibula)

DOCUMENT NUMBER-DATE

03789 MAR 27 8

FPSC-RECORDS/REPORTING

REQUEST TO ESTABLISH DOCKET
(PLEASE TYPE)

Date MARCH 27, 2000

Docket No. 000363-WS

1. Division Name/Staff Name WAW / BRADY ^{pb}
2. OPR WAW / BRADY
3. OCR LEG / CIBULA ^{S.M.C.}

4. Suggested Docket Title Notice of appointment of Polk County as substitute receiver for Skyview Utilities Receivership in Polk County and cancellation of Certificates Nos. 596-W and 511-S.

5. Suggested Docket Mailing List (attach separate sheet if necessary)

- A. Provide NAMES ONLY for regulated companies or ACRONYMS ONLY regulated industries, as shown in Rule 25-22.104, F.A.C.
B. Provide COMPLETE name and address for all others. (Match representatives to clients.)

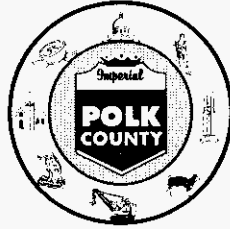
1. Parties and their representatives (if any)

<u>Andrew R. Reilly</u>	<u>Palmer C. Davis, Esquire</u>
<u>Skyview Utilities, Ltd.</u>	<u>Assistant County Attorney - Polk County</u>
_____	<u>Drawer AT01, P.O. Box 9005</u>
_____	<u>Bartow, FL 33831-9005</u>
_____	<u>Tel: (863) 534-6482</u>
_____	<u>Fax: (863) 534-7654</u>
_____	_____

2. Interested Persons and their representatives (if any)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

6. Check one:
 Documentation is attached.
 Documentation will be provided with recommendation.



Mark F. Carpanini
County Attorney

Dana L. Crosby
Palmer C. Davis
Sameer V. Sheth
Karla Foreman Wright

Drawer AT01
P.O. Box 9005
Bartow, FL 33831-9005
Tel: (863) 534-6482
Fax: (863) 534-7654

Board of County Commissioners

Office of the County Attorney

March 22, 2000

Ms. Patricia Brady
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED

MAR 24 2000

Florida Public Service Commission
Division of Air and Wastewater

Re: Exemption of Skyview Water and Wastewater Utility System

Dear Ms. Brady:

Pursuant to our conversation, this is to confirm that, in accordance with Section 367.022(2), Florida Statutes, the Skyview Water and Wastewater Utility System became exempt from Public Service Commission jurisdiction when Polk County was appointed successor receiver of the system on October 12, 1998. For your records, I am enclosing a copy of the order appointing Polk County successor receiver. The effective date of Polk County's receivership is specified in paragraph 2 of the order. Please also let this confirm that Polk County does not wish to voluntarily submit to PSC jurisdiction over the Skyview system at this time.

It is my understanding that I am to wait to hear from you before processing the RAF information you had originally requested. Consequently, I have advised the previous receiver to hold off on completing the forms. In the meantime, please let me know if you need anything further.

Sincerely,

Palmer C. Davis

xc. Darrell Gunn

Encl.

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Plaintiff,

vs.

Case No. GC-G-89-2276

SKYVIEW UTILITIES, LTD., and
CAPITAL SUNBELT INVESTMENTS,
INCORPORATED

Defendants.

ORDER APPOINTING POLK COUNTY AS SUCCESSOR RECEIVER

This cause having come before the Court on Plaintiff's Motion To Appoint Successor Receiver and this Court having considered the motion and being otherwise duly advised,

It is therefore,

ORDERED AND ADJUDGED as follows:

1. Polk County, which has consented through its Board of County Commissioners, shall serve as the Successor Receiver ("Receiver") for the sewer system and drinking water system

formerly owned by Skyview Utilities, Ltd. which is the subject of this litigation and which serves residents in unincorporated Polk County, Florida. The Receiver is not the receiver of Skyview Utilities, Ltd., but only of those assets conveyed to Andrew R. Reilly, Receiver, by Quit Claim Deed dated August 9, 1996 as recorded in Official Records Book 3751, Page 0754 and Quit Claim Assignment of Utility Easement, dated August 9, 1996 recorded in Official Records Book 3751, Page 0756, Public Records of Polk County, Florida. As used herein the following definitions apply:

a. "Parties" means the Plaintiff, the Receiver and any other parties who later become party to this action.

b. "Plant" means the wastewater treatment plant and the wastewater collection and transmission system once owned by Andrew R. Reilly, Receiver, including all pipes, lift stations, lines, meters, and other appurtenances.

c. "Drinking Water System" means the drinking water system once owned by Andrew R. Reilly, Receiver, including the transmission lines, water treatment system and meters.

d. "Utilities" means the aspect of the business now owned and operated by Andrew R. Reilly, Receiver concerning the Plant and the Drinking Water System.

2. The Receiver's appointment is effective as of October 13, 1998, and shall run until such time as the Receiver disposes of the Utilities as provided herein and files a final report, or until the Receiver is otherwise discharged by the Court. The Receiver shall not be required to post a bond.

3. The Receiver shall have the following duties and powers:

a. To manage and operate the Utilities in a manner so as to effectively and efficiently provide sewer and water service to the Utilities customers in accordance with applicable statutes and properly promulgated rules, regulations or ordinances of the United States, the State of Florida, the Board of County Commissioners of Polk County, Florida, or any other regulatory agency or governmental authority with jurisdiction over the Utilities. The Receiver shall have full authority to compromise, settle, prosecute or defend claims involving the Utilities and to enter into agreements to effect settlements with regulatory or governmental authorities, if necessary, subject to final approval by the Court.

b. To expend, at the Receiver's discretion, whatever funds deemed proper for the preservation, maintenance, care, improvement, construction or management of the Utilities, including but not limited to, payment of wages, mortgage payments, premiums on all insurance policies and payments due under contracts.

c. To incur expenses, charges and liabilities in the ordinary course of the Operation of the Utilities.

d. To apply for an increase in the rates charged to the customers served by the Utilities or to obtain a special assessment against the customers served by the Utilities which may be necessary to pay for the costs incurred by the Receiver in operating, maintaining and improving the Utilities and complying with the terms of this Receivership, and to collect such fees and payments for provision of such services.

e. To employ and compensate employees for the operation of the Utilities, including without limitation, attorneys, accountants, managers, agents, assistants, and advisors without liability for any act of those persons, so long as they are selected and retained with ordinary care and their payment is subject to the approval of the Court.

f. To execute deeds, leases, contracts, bills of sale, notes and other written instruments.

g. To file with the Clerk of the Court within twenty days of the date of appointment as Receiver, an inventory under oath of the property coming under its control or possession, all in accordance with Rule 1.620, Florida Rules of Civil Procedure, unless otherwise waived by the Court. The Receiver shall render once a year thereafter, an accounting of any additional property or effects which it has discovered or which shall have come into its possession since appointment, and of the amount of any funds remaining in the hands of or invested by the Receiver, and of the manner in which the same is secured or invested, stating the balance due from or to the Receiver at the time of rendering the last account and the receipts and expenditures since that time. The Receiver is authorized to employ any financial institution, accounting firm or similar organization to prepare such accounting or advise the Receiver as to the preparation of the accounting.

h. To borrow money from any source (including the Receiver in its nonfiduciary capacity), and to secure the loan by mortgage or with other collateral.

i. To compromise, arbitrate or otherwise adjust claims in favor of or against the Receiver and/or the Utilities and to agree to any rescission or modification of any contract or agreement.

j. To participate in any type of liquidation or reorganization of the Utilities, subject to appropriate court approval.

k. To buy, sell, exchange or lease any real or personal property, publicly or privately, for cash or credit, upon terms and conditions that the Receiver deems advisable and subject to approval of the Court after notice to the Parties and any lienholder on the real or

personal property and the opportunity to be heard. Any lease so made will be valid and binding for its full term even though it extends beyond the full duration of the receivership.

- l. To exercise all its powers at all times in a fiduciary capacity.
- m. To perform in a fiduciary capacity any act and make any and all necessary decisions or elections under state law or the Internal Revenue Code on behalf of the Utilities, including but not limited to, the filing of necessary tax returns, and making any adjustments or elections as it deems fit.
- n. To hold, manage, and develop real estate, to grant easements and to make decisions with regard to the real estate as it deems advisable.
- o. To receive reasonable compensation for its services in the operation and management of the Utilities payable from the income earned from the operation of the Utilities.
- p. To establish and maintain bank accounts in the name of the Utilities or the Receiver and negotiate checks, bills, notes, or other instruments in payment of obligations of, or for services rendered to, the Receiver.
- q. To recover a reasonable attorneys' fee and costs in actions brought by or against the Receiver.
- r. To pursue, at its discretion, the rights, causes of action and remedies available to the Utilities at the time of the Receiver's appointment.
- s. To make the \$5486.00 monthly payment to Barnett Bank in payment of

Account No. 03900029038 in accordance with that certain mortgage and Security Agreement recorded in Official Records Book 3751, Page 0780, public records of Polk County, Florida on November 11, 1996.

t. Except as contrary to law, and in addition to all other powers and rights granted herein or by applicable law, the Receiver is empowered to take any action deemed necessary to fully and properly carry out its duties as Receiver.

u. The Receiver shall provide written notice of any of its actions materially affecting the Utilities to the Parties. The Parties, upon reasonable advance notice, may review the books and records kept by the Receiver or its agents.

4. Andrew R. Reilly, Receiver shall retain the authority to:

a. Complete administration of the emergency repair construction loan process through the final draws and acceptance by the Barnett Bank, the lending institution.

b. Continue the Utilities' business operation through a transition period to be agreed upon by the Receiver in order that the meter reading, billing, and collection operation can be subcontracted to the City of Lakeland's utility department.

5. Within 60 days of the entry of this order, the Receiver shall review the accounts of the receivership to determine how much money has been collected from the residents for the purpose of operating and maintaining the Utilities and how much has been spent for that purpose.

6. The Receiver shall maintain separate accounts and otherwise maintain and account for the assets and liabilities of the Receivership separately and independently from the public assets and liabilities of Polk County in its capacity as a governmental entity.

7. At this time, there are two potential options for disposal of the effluent from the Plant: connection of the Plant to the City of Lakeland's sewage treatment system, or creation of an alternative disposal system and construction of any required improvements to the Plant. Polk County is in the process of acquiring a tract of land near the Skyview plant which could be used in part for creation of such an alternative disposal system. However, at this time the suitability of this tract for effluent disposal is unknown. A proposal has been submitted to the Receiver to conduct the necessary engineering study to determine the tract's suitability. The Receiver is directed to take the following actions to ensure that any unpermitted discharges from the Plant are ended in a timely manner:

a. The Receiver is authorized to undertake the proposed engineering study to determine the suitability of the tract for disposal of the effluent from the Skyview Plant. By no later than January 1, 1999, the Receiver shall file a report with the Court concerning the results of the study and what upgrades to the Plant would be required to utilize this alternative.

b. Upon review of the report and response from the Department to the report, the Court shall set a schedule for completing either the construction of and connection to the new effluent disposal system, together with the construction of any required improvements to the Plant associated with such alternative, or the connection to the City, whichever is appropriate.

DONE AND ORDERED in Chambers at Bartow, Polk County, Florida this 9th day of October, 1998.

/s/CHARLES B. CURRY

Charles B. Curry
Circuit Judge

Copies to: David K. Thulman, Esquire, State of Florida, Department of Environmental Protection, 3900 Commonwealth Blvd., MS-35, Tallahassee, FL 32399-3000

Palmer C. Davis, Esquire, P.O. Box 9005, Drawer No. AT01, Bartow, FL 33831

Andrew R. Reilly, Esquire, P.O. Box 2039, Haines City, FL 33845

Timothy J. McCausland, Esquire, 328 S. Massachusetts Ave., Lakeland, FL 33801