



Public Service Commission

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RECORDS AND REPORTING

DATE: AUGUST 17, 2000

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

FROM: DIVISION OF REGULATORY OVERSIGHT (BRADY) *Pb*
DIVISION OF ECONOMIC REGULATION (DAVIS, TIFFANY) *TD*
DIVISION OF LEGAL SERVICES (CIBULA) *S.M.C.* *RA-DM*

RE: DOCKET NO. 000363-WS - 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.
COUNTY: POLK

AGENDA: 08/29/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\000363.RCM

CASE BACKGROUND

Skyview Utilities Receivership (Skyview or utility) is a Class C utility serving approximately 886 water and 1,400 wastewater connections in Polk County. According to its 1997 Annual Report, the utility's total gross revenues were \$367,006 and its total net operating income was \$4,717.

Skyview was franchised by Polk County in 1984. On May 14, 1996, the Board of County Commissioners of Polk County adopted a resolution declaring privately owned water and wastewater utilities in the County subject to the provisions of Chapter 367, Florida Statutes. By Order No. PSC-97-1478-FOF-WS, issued November 24, 1997, in Docket NO. 970459-WS, the Commission granted Skyview grandfather Certificates Nos. 596-W and 511-S.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

Skyview was originally owned and operated by Skyview Utilities, Ltd., with Capital Sunbelt Investments, Incorporated, as the general partner. On September 1, 1994, the owners noticed their intent to abandon the utility. Since 1989, the owners have been in litigation with the Florida Department of Environmental Protection (FDEP) and other government agencies regarding unlawful discharge of wastewater effluent.

On November 16, 1994, in Case No. GC-G-89-2276, the Circuit Court of the Tenth Judicial Circuit, In and For Polk County, Florida, (Circuit Court) appointed Andrew R. Reilly, Esquire, receiver for Skyview's water and wastewater property and assets. Mr. Reilly's duties as receiver specifically included any actions necessary to ensure that the utility's wastewater treatment plant was removed from service in a timely manner, including connection to the City of Lakeland (City). The City was already providing the utility with potable water for resale to its customers.

FDEP subsequently petitioned the Circuit Court to have Polk County appointed substitute receiver. The Circuit Court granted FDEP's motion effective October 12, 1998. While Mr. Reilly's operational duties continued, the appointment of Polk County as successor receiver was intended to involve the County more directly with the solution of the wastewater connection with the City. Once connected to the City, however, Polk County was uncertain what entity would own and operate the utility. The City had indicated it would not and Polk County believed there were legal impediments to it serving an area around the City which it had agreed not to serve. As a consequence, Polk County requested time after its appointment as successor receiver to decide whether to request an exemption from Commission regulation pursuant to Rule 25-30.090(6), Florida Administrative Code.

While still uncertain what entity will ultimately own and operate the utility, by letter dated March 22, 2000, Polk County indicated its intent to exempt the utility from Commission regulation effective October 12, 1998. On March 27, 2000, this docket was established to acknowledge the appointment of Polk County as successor receiver and to cancel the utility's certificates.

Skyview untimely filed its 1996 annual report on March 30, 1998, and its 1997 annual report on May 26, 2000. Staff's recommendation on whether the utility should be required to show cause why it should not remit a penalty for its apparent violation of Rule 25-30.110, Florida Administrative Code, is addressed in Issue 1.

DISCUSSION OF ISSUES

ISSUE 1: Should Skyview Utilities Receivership be ordered to show cause in writing, within 21 days, why it should not remit a penalty of \$3.00 per day for its apparent violation of Rule 25-30.110, Florida Administrative Code, for failure to timely file its 1996 and 1997 annual reports?

RECOMMENDATION: No. A show cause proceeding should not be initiated. (CIBULA)

STAFF ANALYSIS: As previously stated, Skyview filed its 1996 annual report on March 30, 1998, and its 1997 annual report on May 26, 2000. Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Requests for extension of time must be made in writing and filed prior to the March 31 deadline.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set forth in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3.00 per day. Pursuant to Rule 25-30.110(6)(c), Florida Statutes, the Commission may impose lesser or greater penalties.

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 timely file its 1996 and 1997 annual reports, 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, Florida Administrative Code, 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 "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule."

Although Skyview's failure to timely file its 1996 and 1997 annual reports is an apparent violation of Rule 25-30.110, Florida Statutes, there are circumstances which appear to mitigate the

utility's apparent violation. By Order No. PSC-97-1478-FOF-WS, issued November 24, 1997, in Docket No. 970459-WS, the Commission acknowledged that Skyview had remitted its 1996 regulatory assessment fees (RAFS) but not its 1996 annual report. As a consequence, the utility was required to file its 1996 annual report within 45 days of the issuance date of the order, which would have been January 8, 1998. During this time, the Commission sent the utility a letter requesting its 1997 annual report and RAFs with a specified filing date of March 31, 1998. The utility filed its 1996 annual report on March 30, 1998, the date its 1997 annual report was due, along with its 1997 RAFs. The 1996 annual report was inadvertently logged in as the utility's 1997 annual report. Consequently, the Commission did not send the utility a notice of delinquency for its 1997 annual report until the error was discovered in this docket. When the utility received the notice indicating that its 1997 annual report was delinquent, it immediately filed its 1997 annual report on May 26, 2000. According to the utility, it had been waiting for the Commission to request the annual report.

Because of the apparent confusion regarding the filing time for the 1996 annual report and because the utility immediately filed its 1997 annual report upon being contacted by staff, staff does not believe the apparent violation of Rule 25-30.110, Florida Statutes, rises to the level which warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Skyview to show cause in writing, within 21 days, why it should not remit a penalty of \$3.00 per day for its apparent violation of Rule 25-30.110, Florida Administrative Code, for failure to timely file its 1996 and 1997 annual reports.

ISSUE 2: Should the Commission acknowledge the appointment of Polk County as substitute receiver for Skyview Utilities Receivership and cancel Certificates Nos. 596-W and 511-S?

RECOMMENDATION: Yes. The Commission should acknowledge the appointment of Polk County as the substitute receiver for Skyview Utilities Receivership effective October 12, 1998. Certificates Nos. 596-W and 511-S should be canceled. (BRADY, DAVIS, CIBULA)

STAFF ANALYSIS: As noted in the Case Background, on October 12, 1998, the Court appointed Polk County as substitute receiver for Skyview. By letter dated March 22, 2000, Polk County indicated its intent to exempt the utility from Commission regulation effective October 12, 1998. On March 27, 2000, this docket was established to acknowledge the appointment of Polk County as successor receiver and to cancel the utility's certificates. Because the utility has been operated by a governmental entity since October 12, 1998, staff recommends that October 12, 1998, be the effective date that the utility became exempt from Commission regulation pursuant to Section 367.022(2), Florida Statutes.

Staff has verified that Skyview has no open dockets with pending issues. If the Commission accepts staff's recommendation to acknowledge the appointment of Polk County as substitute receiver effective October 12, 1998, then Skyview would not have been subject to Commission regulation on December 31, 1998, and pursuant to Rule 25-30.110(3) Florida Administrative Code, would not be required to file a 1998 annual report. Although the utility did not timely remit its 1998 RAFs, it has subsequently paid its 1998 RAFs, up through October 12, 1998, as well as the associated penalties and interest. Therefore, the utility is current on RAFs up through October 12, 1998, and there are no penalties, interest or refunds due.

Based on the above, staff recommends that the Commission acknowledge the appointment of Polk County as substitute receiver for Skyview Utility Receivership effective October 12, 1998, and that Certificates Nos. 595-W and 511-S be canceled.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission accepts staff's recommendation in Issues 1 and 2, no further action is required and this docket should be closed. (CIBULA)

STAFF ANALYSIS: If the Commission accepts staff's recommendation in Issues 1 and 2, no further action is required and the docket should be closed.