

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 000363-WS
ORDER NO. PSC-00-1643-FOF-WS
ISSUED: September 14, 2000

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER

ORDER ACKNOWLEDGING APPOINTMENT OF SUBSTITUTE RECEIVER,
CANCELING CERTIFICATES NOS. 596-W AND 511-S,
AND DECLINING TO INITIATE A
SHOW CAUSE PROCEEDING

BY THE COMMISSION:

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 (County) in 1984. On May 14, 1996, the County adopted a resolution declaring privately owned water and wastewater utilities in the County subject to Commission regulation. By Order No. PSC-97-1478-FOF-WS, issued November 24, 1997, in Docket No. 970459-WS, we granted Skyview grandfather Certificates Nos. 596-W and 511-S.

Skyview was originally owned and operated by Skyview Utilities, Ltd., with Capital Sunbelt Investments, Inc., 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

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(FDEP) and other government agencies regarding unlawful discharge of wastewater effluent.

On November 16, 1994, the Polk County Circuit Court (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.

The FDEP subsequently petitioned the Circuit Court to have the County appointed substitute receiver. The Circuit Court granted the FDEP's motion effective October 12, 1998. While Mr. Reilly's operational duties continued, the appointment of the County as substitute 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, the County was uncertain what entity would own and operate the utility. The City had indicated it would not own and operate the utility, and the County believed there were legal impediments to it serving an area around the City which it had agreed not to serve.

The County requested time after its appointment as substitute receiver to decide whether to request an exemption from our 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, the County indicated its intent to exempt the utility from our regulation, pursuant to Section 367.022(2), Florida Statutes, effective October 12, 1998. On March 27, 2000, this docket was established to acknowledge the appointment of the County as substitute receiver and to cancel the utility's certificates.

NO SHOW CAUSE REQUIRED

Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to our 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. Skyview untimely filed its 1996 annual report on March 30, 1998, and its 1997 annual report on May 26, 2000.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, a 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 per day. Pursuant to Rule 25-30.110(6)(c), Florida Statutes, we may impose lesser or greater penalties.

Utilities are charged with the knowledge of our 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, we acknowledged that Skyview remitted its 1996 regulatory assessment fees, but the utility had not filed its 1996 annual report. Order No. PSC-97-1478-FOF-WS required the utility 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, our staff sent the utility a letter requesting its 1997 annual report and regulatory assessment fees, with a specified filing date of March 31, 1998. The utility filed its 1996 annual report on March 30, 1998, one day prior to the filing deadline for its 1997 annual report, along with its 1997 regulatory assessment fees. The 1996 annual report was inadvertently logged in as the utility's 1997 annual report. Consequently, the utility was not sent 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 date for the 1996 annual report and because the utility immediately filed its 1997 annual report upon being contacted by our staff, we do not believe the apparent violation of Rule 25-30.110, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, Skyview shall not be required to show cause for failure to timely file its 1996 and 1997 annual reports.

ACKNOWLEDGMENT OF SUBSTITUTE RECEIVER

As previously noted, on October 12, 1998, the Circuit Court appointed the County substitute receiver for Skyview. By letter dated March 22, 2000, the County indicated its intent to exempt the utility from our regulation effective October 12, 1998. Because the utility has been operated by a governmental entity since October 12, 1998, the effective date that the utility became exempt from our regulation, pursuant to Section 367.022(2), Florida Statutes, is October 12, 1998.

Skyview has no open dockets with pending issues. As the County became substitute receiver effective October 12, 1998, Skyview was not subject to our regulation on December 31, 1998. Thus, pursuant to Rule 25-30.110(3), Florida Administrative Code, the utility was not required to file a 1998 annual report.

Although the utility did not timely remit its 1998 regulatory assessment fees, it has subsequently paid its 1998 regulatory assessment fees up through October 12, 1998, as well as the associated penalties and interest. Therefore, the utility is current on its regulatory assessment fees, and there are no penalties, interest or refunds due.

Based on the foregoing, we hereby acknowledge the appointment of the County as substitute receiver for Skyview effective October 12, 1998. Certificates Nos. 596-W and 511-S are canceled.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the appointment of Polk County as substitute receiver for Skyview Utilities Receivership is hereby acknowledged. It is further

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ORDERED that Skyview Utilities Receivership's Certificates Nos. 596-W and 511-S are canceled. It is further

ORDERED that Skyview Utilities Receivership shall not be required to show cause for its apparent violation of Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of September, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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,

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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.