

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of  
delinquent regulatory assessment  
fees of Homosassa Utilities,  
Inc., former holder of  
Certificate No. 429-S in Citrus  
County.

DOCKET NO. 980342-WS  
ORDER NO. PSC-98-0663- FOF-WS  
ISSUED: May 14, 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 DECLINING TO INITIATE SHOW CAUSE AND REFERRING DELINQUENT  
REGULATORY ASSESSMENT FEES, PENALTY AND INTEREST TO COMPTROLLER'S  
OFFICE FOR PERMISSION TO WRITE-OFF ACCOUNT

BY THE COMMISSION:

BACKGROUND

Homosassa Utilities, Inc. (HUI or utility) was a Class C  
utility in Citrus County serving 66 water customers and 62  
wastewater customers. Based on the information in its 1991 annual  
report, HUI reported operating revenues of \$92,653. By Order No.  
PSC-94-1163-FOF-SU, issued September 22, 1994 in Docket No. 930763-  
SU, we approved the transfer of HUI's Certificate No. 429-S to RHV  
Utility, Inc (RHV). HUI was incorporated in the State of Florida  
in June of 1987; however, the corporation was dissolved on August  
13, 1993. T.O. Sullivan was HUI's registered agent.

Based upon HUI's 1991 annual report, the utility owes  
\$4,169.39 for 1991 regulatory assessment fees. We have also  
estimated that HUI owes \$4,320.74 for 1992 regulatory assessment  
fees. The amount of the utility's 1992 regulatory assessment fees  
was estimated, because HUI did not file a 1992 annual report.  
According to RHV, it acquired no utility records for 1992 when it

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purchased HUI. To date, HUI has failed to remit its 1991 and 1992 regulatory assessment fees.

#### REGULATORY ASSESSMENT FEES

In establishing rates, we include in our determination of the revenue requirements, the utility's obligation to pay regulatory assessment fees. However, this utility failed to pay regulatory assessment fees for 1991 and 1992. Although the utility was transferred to RHV, HUI remains responsible for those fees pursuant to Section 367.071(2), Florida Statutes.

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(5)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its regulatory assessment fees, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.
2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% annum.

In addition, pursuant to Sections 367.145(1)(b) and 367.161, Florida Statutes, and Rule 25-30.120(5)(b), Florida Administrative Code, the Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner.

Notices of delinquency for failure to remit its regulatory assessment fees were mailed to the utility on April 28, 1993, May 21, 1997, January 15, 1998 and March 25, 1998. Notices were mailed to the utility's officers on January 15, 1998, January 30, 1998 and March 25, 1998. As of March 31, 1998, the utility owes the following: \$8,490.13 (\$4,169.39 for 1991 and \$4,320.74 for 1992) in regulatory assessment fees, as well as \$2,122.54 (\$1,042.35 for 1991 and \$1,080.19 for 1992) in penalties and \$5,975.70 (\$3,210.43 for 1991 and \$2,765.27 for 1992) in interest for a total of \$16,588.37. We calculated the penalty and interest based on the number of days elapsed since the respective regulatory assessments

were due and the date of our vote in this matter. The date of our vote was included in computing the amount of time elapsed.

Regulatory assessment fees are intended to cover the costs incurred in our regulation of utilities. Apparently, the utility had no inclination to pay the fees voluntarily, nor does it appear that the utility made a good faith effort toward payment. 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 pay regulatory assessment fees, 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., this Commission, having found that the utility 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.

We believe that the utility's failure to pay its regulatory assessment fees rises to a level that would normally warrant a show cause proceeding. As stated in the case background, this utility was transferred in 1994, and the utility corporation was dissolved on August 13, 1993. Under certain conditions, the directors and shareholders of a dissolved corporation could be held responsible for a distribution of funds prior to the payment of regulatory assessment fees. However, as discussed below, we do not believe that HUI's directors and shareholders can be held responsible for HUI's delinquent regulatory assessment fees.

Section 607.06401(3), Florida Statutes, provides in pertinent part:

No distribution may be made, if after giving it effect:  
(a) The corporation would not be able to pay its debts as they become due in the usual course of business . . . .

Section 607.0834(1), Florida Statutes, provides in pertinent part:

A director who votes for or assents to a distribution made in violation of s. 607.06401 . . . is personally

liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating s. 607.06401 . . . if it is established that he did not perform his duties in compliance with s. 607.0830.

To hold a director liable under Section 607.0830, Florida Statutes, it must essentially be shown that the director made the unlawful distribution in bad faith. Furthermore, for a director to be held liable for an unlawful distribution, a proceeding must be "commenced within 2 years after the date on which the effect of the distribution was measured . . . ." Section 607.0834(3), Florida Statutes. In this case, we have no information regarding when distributions were made. Therefore, it is unclear when the time began to run for holding the directors liable. Further, Section 607.1406(13), Florida Statutes, provides that a shareholder of a dissolved corporation is not liable for any claim against the corporation which is brought after three years of the effective date of dissolution. A proceeding against the shareholders would have required commencement by August 13, 1996.

Based on the foregoing, we find that a show cause proceeding and further collection efforts would not be cost effective. As discussed earlier, we have already made attempts by letter to collect the delinquent regulatory assessment fees, penalty and interest. Therefore, we find that a show cause proceeding shall not be initiated against HUI for its failure to pay 1991 and 1992 regulatory assessment fees. HUI's unpaid regulatory assessment fees and associated penalty and interest shall be referred to the State of Florida Comptroller's Office for permission to write off the account as uncollectible. Upon referral to the Comptroller's Office, no further action will be required, and this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated against Homosassa Utilities, Inc. for violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code. It is further

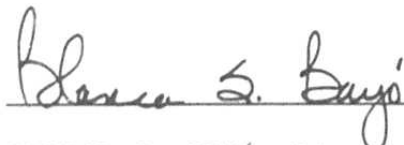
ORDERED that Homosassa Utilities, Inc.'s delinquent 1991 and 1992 regulatory assessment fees and associated penalties and interest shall be referred to the State of Florida Comptroller's

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Office for permission to write off the account as uncollectible.  
It is further

ORDERED that upon referral of this matter to the Comptroller's  
Office, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th  
day of May, 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

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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.