

M E M O R A N D U M

March 10, 1989

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TO : DAVID SWAFFORD, EXECUTIVE DIRECTOR

FROM : DIVISION OF LEGAL SERVICES (SWIM) *DS*  
 DIVISION OF WATER AND SEWER (DANIEL, MCCASKILL) *aw* *ush* *SA* *mm* *ll*

RE : REQUEST TO INITIATE COURT PROCEEDINGS AGAINST DENNIS STEWART, DOCKET NO. 860149-WU, SUNNYLAND UTILITIES, INC., FOR CONSIDERATION AT INTERNAL AFFAIRS

ORIGINAL FILE COPY

CRITICAL DATES: STAFF WOULD LIKE TO HAVE THIS ITEM PLACED ON THE APRIL 3, 1989 INTERNAL AFFAIRS. THERE ARE NO TIME RESTRICTIONS WHICH WOULD PROHIBIT THIS ITEM FROM BEING DEFERRED.

Sunnyland Utilities, Inc., ("Sunnyland"), applied for a rate increase for its water system on April 16, 1986. Interim rates were authorized, subject to refund, by Commission Order 16306, issued July 3, 1986. Mr. Dennis K. Stewart, then president of Sunnyland, executed a personal guarantee of \$30,000 to secure payment of the interim rates.

A rate increase was proposed by PAA Order on November 10, 1986. The Citizens, through the Office of Public Counsel, requested a hearing on the PAA rates. Order No. 17402, issued April 14, 1987, authorized Sunnyland to

charge, subject to refund, the PAA rates for services rendered on or after April 1, 1987. That Order also directed placement of 68.9% of the monies collected in an escrow account to further guarantee payment should a refund be ordered. Before the date scheduled for hearing on the PAA rates, Sunnyland filed for bankruptcy.

No hearing was held on the PAA rates. The customers have formed a nonprofit corporation, (the "Co-op"), that has purchased and is operating the

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water system. The Commission has issued an Order indicating that the Co-op is exempt from Commission regulation pursuant to the exemption for non-profit corporations set forth in Section 367.022(7), Florida Statutes. Since filing its rate case, Sunnyland has been through a Chapter 7 (liquidation) bankruptcy proceeding. Although the utility was involuntarily dissolved by the Secretary of State for nonfiling of its corporate annual report, it has been reinstated and currently exists as a corporate entity.

By Order No. 20127, issued October 6, 1988, this Commission dismissed Sunnyland's rate case and directed Sunnyland to refund, within 90 days, all monies collected in excess of original rates, up until the time that the Co-op began collecting the rates, excluding those funds placed in escrow by Sunnyland. That order further directed that any portion of the refund not made by Sunnyland within the specified time shall be made by Dennis K. Stewart up to a maximum of \$30,000, pursuant to his personal guaranty.

Neither Sunnyland, nor Mr. Stewart has refunded any monies to the customers. On January 24, 1989, certified letters were sent to Messers Stewart and Spatz directing payment. The certified receipt was returned. No response was received from Mr. Spatz. A February 23, 1989 letter from Mr. Stewart states that he is no longer associated with Sunnyland Utilities, Inc. This would not excuse obligations under the personal guaranty.

In view of Sunnyland's recent bankruptcy liquidation, staff does not believe it would be cost-effective to pursue a refund from Sunnyland at this time. Court records as of July, 1988 do not indicate that Mr. Stewart has filed a bankruptcy claim. Therefore, staff requests authorization to initiate appropriate court proceedings to collect the \$30,000 personal guaranty executed by Mr. Stewart, so that those monies can be refunded to the customers.