

State of Florida



Public Service Commission **SCANNED**
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: OCTOBER 25, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (ESPINOZA) *JAE*
DIVISION OF ECONOMIC REGULATION (PEACOCK) *PS DM RIT*

RE: DOCKET NO. 010814-WU - INITIATION OF SHOW CAUSE
PROCEEDINGS AGAINST DIXIE GROVES ESTATES, INC. AND
VIRGINIA CITY UTILITIES, INC., IN PASCO COUNTY, FOR
VIOLATION OF RULE 25-30.110(3), F.A.C., ANNUAL REPORTS.

AGENDA: 11/6/01 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\010814.RCM

CASE BACKGROUND

Virginia City Utilities, Inc. (VCUI) and Dixie Groves Estates, Inc. (Dixie Groves) are two separate utilities owned jointly by Mr. Judson Potter and Mr. Matthew A. Potter, a father and son. Both utilities are located in Pasco County.

VCUI is a Class "C" utility which resells water services to 299 residential and 12 general service customers in an area known as Virginia City. The utility began operation in 1970. On July 26, 1973, Virginia City, Inc. was granted a water certificate. By Order No. PSC-94-0084-FOF-WU, issued January 24, 1994, the Commission approved the transfer of the certificate to VCUI. According to its 2000 Annual Report, VCUI had annual revenues of \$92,408.

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FPSC-COMMISSION CLERK

Dixie Groves is a Class "C" utility which provides water service to approximately 337 water customers. The utility was issued a Water Certificate in Docket No. C-73191-W on May 7, 1973. On May 3, 1999, Dixie Groves filed an application for transfer of majority organizational control of the utility from Mr. Frank Potter to Mr. Judson F. Potter and Mr. Matthew A. Potter in Docket No. 990548-WU. By Order No. PSC-00-0914-FOF-WU, issued May 8, 2000, the Commission approved the transfer. According to its 2000 Annual Report, Dixie Groves had annual revenues of \$55,413.

Pursuant to Rule 25-30.110(3)(a), Florida Administrative Code, utilities subject to Commission jurisdiction are required to file an annual report with the Commission on or before March 31 for the preceding year ending December 31. Annual reports are considered filed on the day they are postmarked or received by the Commission. Pursuant to Rule 25-30.110(3)(c), Florida Administrative Code, a utility may file a written request for an extension of time with the Commission no later than March 31, and one extension of 30 days will be automatically granted upon request.

On March 31, 2000, the Commission received two separate written requests from Matthew A. Potter, on behalf of VCUI and Dixie Groves, for a 30 day extension in which to file the utilities' 1999 annual reports. By letters dated April 3, 2000 and April 4, 2000, these requests were granted, and a new filing deadline of April 30, 2000 was set for both utilities.

Subsequent letters dated June 16, 2000 and August 23, 2000 were sent to both utilities regarding the 1999 annual reports. The letters stated that according to Commission records, both VCUI and Dixie Groves had failed to submit the 1999 annual reports by the requested extension date of April 30, 2000. The letters further advised the utilities that the applicable penalty for noncompliance with the annual report requirement for a Class C utility is \$3 per day, for each day that had elapsed from the due date until the date of filing.

The Commission received the annual reports for both VCUI and Dixie Groves on September 6, 2000, thereby making each report 129 days late. The applicable penalty for each utility was \$387 (129 days X \$3 per day), for a total of \$774 for both utilities. Staff contacted Mr. Matthew Potter by telephone in October of 2000 to inquire about the payment of the \$774 penalty. Mr. Potter stated that he had mailed in the reports via certified mail on May 5,

2000. He further stated to staff that upon receiving the letters dated June 16, 2000 and August 23, 2000, he had mailed the annual reports to the Commission for both utilities on two other separate occasions. As stated previously, the Commission did not have a record of receipt of the annual reports for these utilities until September 6, 2000.

Mr. Potter later sent staff a letter dated October 13, 2000, in which he enclosed payment of the \$774 penalty. Also enclosed with this letter was a receipt from the post office for certified mail addressed to the Commission dated May 5, 2000. In his letter, Mr. Potter stated that he was unable to find the returned certified mail card, and that he believed that he never received the returned card, but that the annual reports for both VCUI and Dixie Groves were sent on May 5, 2000, via certified mail, to the Commission. Mr. Potter stated that he was enclosing the penalty amount of \$774 in order to avoid conflict and show cause proceedings. However, he also stated that he had contacted the post office to attempt to trace the mail, and if he was able to obtain any information from the post office regarding the certified mail, he would forward it to staff, and he would expect a refund of the penalty amount.

This recommendation addresses whether VCUI and Dixie Groves should be ordered to show cause, in writing, within 21 days, why they should not be fined for failure to comply with Rule 25-30.110(3)(a), Florida Administrative Code, and whether any or all of the \$774 late penalty should be reimbursed to the utilities. The Commission has jurisdiction pursuant to Section 367.161, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should VCUI, and Dixie Groves be ordered to show cause, in writing, within 21 days, why they should not be fined for failure to timely file their 1999 annual reports, in apparent violation of Rule 25-30.110(3), Florida Administrative Code?

RECOMMENDATION: No, show cause proceedings should not be initiated at this time. Staff further recommends that a portion of the \$774 late penalty that was paid by the utilities be reimbursed in the amount of \$372 each, for a total of \$744. (ESPINOZA, PEACOCK)

STAFF ANALYSIS: Rule 25-30.110, Florida Administrative Code, requires utilities subject to Commission jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Requests for an extension of time must be in writing and must be filed before March 31. One extension of 30 days is automatically granted. A further extension may be granted upon showing of good cause.

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 out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3 per day.

As stated in the case background, on March 31, 2000, the Commission received two separate written requests from Mr. Matthew A. Potter, on behalf of VCUI and Dixie Groves, for a 30 day extension in which to file the utility's 1999 annual reports. By letters dated April 3, 2000 and April 4, 2000, these requests were granted, and a new filing deadline of April 30, 2000 was set for both utilities.

Subsequent letters dated June 16, 2000 and August 23, 2000 were sent to both utilities regarding the 1999 annual reports. The letters stated that according to Commission records, both VCUI and Dixie Groves had failed to submit the 1999 annual reports by the requested extension date of April 30, 2000. The letters further advised the utilities that the applicable penalty for noncompliance with the annual report requirement for a Class C utility is \$3 per day, for each day that had elapsed from the due date until the date of filing.

The Commission received the annual reports for both VCUI and Dixie Groves on September 6, 2000, thereby making each report 129 days late. The applicable penalty for each utility was \$387 (129 days X \$3 per day), for a total of \$774 for both utilities. Staff contacted Mr. Matthew Potter by telephone in October of 2000 to inquire about the payment of the \$774 penalty. Mr. Potter stated that he had mailed in the reports via certified mail on May 5, 2000. He further stated to staff that upon receiving the letters dated June 16, 2000 and August 23, 2000, he had mailed the annual reports to the Commission for both utilities on two other separate occasions. As stated previously, the Commission did not have a record of receipt of the annual reports for these utilities until September 6, 2000.

Mr. Potter later sent staff a letter dated October 13, 2000, in which he enclosed payment of the \$774 penalty. Also enclosed with this letter was a receipt from the post office for certified mail addressed to the Commission dated May 5, 2000. In his letter, Mr. Potter stated that he was unable to find the returned certified mail card, and that he believed that he never received the returned card, but that the annual reports for both VCUI and Dixie Groves were sent on May 5, 2000, via certified mail, to the Commission. Mr. Potter stated that he was enclosing the penalty amount of \$774 in order to avoid conflict and show cause proceedings. However, he further stated that he had contacted the post office to attempt to trace the mail, and that if he was able to obtain any information from the post office regarding the certified mail, he would forward it to staff, and he would expect a refund of the penalty amount. To date, staff has not received any further information from Mr. Potter regarding this matter.

Section 367.161, Florida Statutes, authorizes this Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order or provision of Chapter 367, Florida Statutes. 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 "in our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Although regulated utilities are charged with knowledge of this Commission's rules and statutes, staff does not believe that the apparent violation of Rule 25-30.110, Florida Administrative Code, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. As stated previously, Mr. Potter responded to staff's letters and inquiries regarding the 1999 annual reports for VCUI and Dixie Grove by re-sending the reports, and by remitting the penalty of \$774. In addition, Mr. Potter provided a certified mail receipt from the post office, dated May 5, 2000, and addressed to the Commission which he claims are the receipts from the first time he mailed the 1999 annual reports to the Commission.

Staff believes that Mr. Potter did mail the 1999 annual reports on May 5, 2000, as evidenced by the receipts he provided. Further, staff believes that Mr. Potter paid the late penalty of \$774 to the Commission in an attempt to avoid a show cause proceeding, and in an attempt to cooperate with staff. However, based on the evidence provided by Mr. Potter, staff does not believe that the penalty of \$774 should be assessed.

Both VCUI and Dixie Groves were granted an automatic 30-day extension in which to file their annual reports, thus making the reports due on April 30, 2000. Because staff originally believed the reports were first received on September 6, 2000, it was believed that the utilities were 129 days late in filing their 1999 annual reports, making the applicable penalty for each utility \$387 (129 days X \$3 per day). However, according to the information provided by Mr. Potter, staff now believes that both reports were mailed on May 5, 2000, making the reports only five days late. Thus, the applicable penalty for each utility should be \$15 (5 days X \$3 per day). Since Mr. Potter already paid the \$387 penalty on behalf of both utilities, staff believes that Mr. Potter is entitled to a refund in the amount of \$372 for each utility (\$387 - \$15 = \$372), for a total of \$744.

For the foregoing reasons, staff does not believe it is appropriate to initiate a show cause proceeding against VCUI and Dixie Groves for failing to file their annual reports for 1999, in apparent violation of Rule 25-30.110, Florida Administrative Code. Further, staff recommends that both utilities be reimbursed in the amount of \$372 each, for a total of \$744.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, because no further action is necessary, this docket should be closed. (ESPINOZA)

STAFF ANALYSIS: Because no further action is necessary, this docket should be closed.

