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2005 MAY 13 PM 4:46
SC PUBLIC SERVICE COMMISSION

May 13, 2005

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Re: Petition of the Office of Regulatory Staff to Request Forfeiture of the Bond and to Request Authority to Petition the Circuit Court for Appointment of a Receiver.
PSC Docket No.: 2005-110-W/S

Dear Mr. Terreni:

For your docket, please find enclosed a copy of the Office of Regulatory Staff's Response to Motion to Sever and Motion for Joinder of Additional Parties which was served on counsel for Piney Grove Utilities, Inc., D. Reece Williams, IV, and Elizabeth P. Williams. Also, if you would please date stamp the extra copy enclosed and return it to me via our courier.

Please let me know if you have any questions

Sincerely,

Benjamin P. Mustian

BPM/cc
Enclosures

cc: D. Reece Williams, IV, President
Elizabeth P. Williams, Vice President
Louis Lang, Esquire
Jessica J.O. King, Esquire

BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2005-110-W/S

May 13, 2005

2005 MAY 13 PM 4:40
SC PUBLIC SERVICE COMMISSION

IN RE: Petition of the Office of Regulatory Staff to Request Forfeiture of the Piney Grove Utilities, Inc. Bond And to Request Authority To Petition the Circuit Court for Appointment of a Receiver	)	**CERTIFICATE OF SERVICE**

This is to certify that I, Benjamin P. Mustian, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **Office of Regulatory Staff's Response to Motion to Sever and Motion for Joinder of Additional Parties** in the above-referenced matter to the person(s) named below by causing said copy to be sent deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Louis Lang, Esquire
Callison, Tighe & Robinson, LLC
1812 Lincoln Street, Suite 200
Columbia, SC 29202-1390

D. Reece Williams, IV, President
Piedmont Water Company, Inc.
49 Archdale Street
Charleston, SC 29401

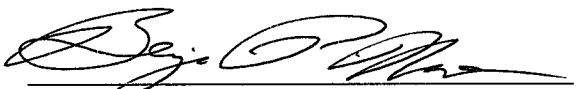
Elizabeth P. Williams, Vice President
Piedmont Water Company, Inc.
49 Archdale Street
Charleston South Carolina

and

717 King Street
Columbia, SC 29205

and

Post Office Box 22023
Charleston, SC 29413



Benjamin P. Mustian

May 13, 2005
Columbia, South Carolina

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2005-110-W/S

RECEIVED
2005 MAY 13 PM 4:40
SC PUBLIC SERVICE COMMISSION

IN RE: Petition of the Office of Regulatory Staff to Request Forfeiture of the Piney Grove Utilities, Inc. Bond And to Request Authority To Petition the Circuit Court for Appointment of a Receiver	))))))	RESPONSE TO MOTION TO SEVER AND MOTION FOR JOINDER OF ADDITIONAL PARTIES

The Office of Regulatory Staff ("ORS") hereby responds to the Motion to Sever filed by the respondent in the above referenced docket on May 3, 2005. In addition, if the Public Service Commission deems certain parties as necessary to this docket, ORS moves to join those additional parties pursuant to 26 S.C. Regs. 103-840 and South Carolina Rules of Civil Procedure 19(a) and 21. In support of said Response and Motion, ORS would show the following:

BACKGROUND

1. Piney Grove Utilities, Inc. ("Piney Grove" or "Company") currently provides wastewater collection and treatment services to the Lloydwood and Franklin Park subdivisions in Richland and Lexington counties. On April 22, 2005, ORS filed a Petition with the Public Service Commission ("Commission") requesting authority to petition the Circuit Court for appointment of a receiver to operate Piney Grove. The Petition also requested that the Commission declare the bond for Piedmont Water Co., Inc. ("Piedmont") forfeited. The request

for forfeiture was based upon assertions that Piney Grove, whose stock has been consolidated under the corporate structure of Piedmont, has been unable to provide adequate and proper service as required by Commission statutes and regulations.

2. On May 3, 2005, Piney Grove filed a Motion for a Continuance and a Motion to Sever certain portions of the petition. Subsequently, ORS filed a response with the Commission on May 9, 2005 relating to the Motion for a Continuance, and reserved its right to respond to the Motion to Sever at a later date. Piney Grove's Motion to Sever alleges the bond has been executed by two people, neither of whom are currently parties to this action. Piney Grove stated that both individuals should be parties to this action and that, given the "compressed time frame" of the proceeding, neither would have the opportunity to respond appropriately.

THE INDIVIDUALS LISTED AS SURETIES ARE NOT REQUIRED TO BE NAMED AS PARTIES TO THIS PROCEEDING

3. The performance bond executed by Piedmont and its sureties, D. Reece Williams, IV, and Elizabeth P. Williams,[1] ("Sureties") states that Mr. and Mrs. Williams as sureties "are held and firmly bound unto the Public Service Commission of South Carolina...for the payment of which...the principal binds itself...and the sureties bind themselves...jointly and severally...."

4. It has been held that "a judgment against a principal conclusively establishes the liability of a surety as long as the surety had notice of the proceedings against the principal." United States ex rel. Skip Kirchdorfer, Inc. v. M.J. Kelley Corp., 995 F.2d 656, 661 (6th Cir.1993) (citing Frederick v. United States, 386 F.2d 481, 485 n. 6 (5th Cir.1967)). Further, "a

[1] The Motion filed by Piney Grove did not specify the two individuals who are not yet parties to this action; however, the performance bond was executed by D. Reece Williams, IV, and Elizabeth P. Williams.

nonparty to an action may be bound by a judgment under res judicata if one of the parties to the action is so closely aligned with the interests of the nonparty as to be his virtual representative." Klugh v. United States, 818 F.2d 294, 300 (4th Cir.1987). Mr. and Mrs. Williams' interests are so closely aligned with that of Piney Grove that they will not be denied their rights of due process if they are not included as a party of record. The Sureties serve as President and Vice-President of Piedmont and have the authority to bind and represent Piedmont and its consolidated corporations in their official capacity. As both officers and sureties, they have clearly been provided constructive notice of these proceedings. Considering their positions with Piedmont and their managerial and fiduciary authority over its operations, Mr. and Mrs. Williams will be personally bound by a decision of this Commission. As such, the alignment of their interests with Piney Grove and with Piedmont does not hinder their positions being properly adjudicated if they are not specifically named as parties in this proceeding.

5. In addition, 26 S.C. Code Ann. § 58-5-720 provides that "the commission has the right, upon notice and hearing, to declare all or any part of the bond or certificate of deposit forfeited upon a determination by the commission that the utility failed to provide service without just cause or excuse and that this failure has continued for an unreasonable length of time." The scope of this proceeding is presently limited to the adequacy of the service currently being provided by Piney Grove to its customers. Parties are restricted to their specific knowledge or concern as to the service provided by Piney Grove. Accordingly, the interests of the Sureties of Piney Grove and Piedmont as to the revocation of the bond would be adequately represented by the Company, and any additional interests are currently not relevant to this proceeding. Any assertions by the Sureties relating to the bond revocation which do not arise out

of issues other than the adequacy and properness of service may not be properly considered in this forum.

JUDICIAL ECONOMY WILL NOT BE SERVED BY SEVERING THE PETITION

6. The Motion filed by Piney Grove provides there are "short term" and "long term" issues associated with Piney Grove. Further, Paragraph 6 of the Motion states the short term issues are currently being addressed by the Circuit Court and, therefore, should not be decided by the Commission at this time. Rather, the Motion provides "the long term issues raised by the ORS petition need to be and should be addressed by this Commission."

7. The Petition filed by ORS requests permission to appoint a receiver and revoke the bond for lack of adequate and proper service provided by Piney Grove to its customers. Both statutes provide that inadequate and improper service is the benchmark for determining whether a receiver should be appointed and whether to revoke the bond. The statutes do not reference the "short term" or "long term" effect of inadequacy. The appropriate forum in which to decide whether the difficulties Piney Grove is currently experiencing rise to the level of requiring a receiver or revocation of the bond is a public hearing. Only in a public hearing can the Commission properly accept testimony and evidence as to the adequacy of service being provided by Piney Grove, whether short or long term. Nevertheless, as these issues are relevant to both the receivership and the forfeiture matters, it would be detrimental for this Commission and the parties to participate in two separate hearings to decide identical issues.

8. The issues currently being considered by the Circuit Court, while tangentially related, do not affect the ability of this Commission to appropriately rule on this petition. The proceedings in Circuit Court were utilized to correct an immediate need created by Piney Grove

failing to employ a certified operator as required by its NPDES permit. As a result of those Circuit Court proceedings, DHEC was allowed to assume control of the wastewater treatment facility for a period of fourteen days. On Friday, May 6, 2005, Piney Grove and DHEC entered into an agreement whereby Piney Grove agreed to enter into a valid contract with a certified operator no later than Monday, May 9, 2005, or it would allow DHEC to seek appointment of a receiver. Piney Grove failed to enter such a contract, thus exemplifying the continuing problems Piney Grove has had in providing adequate and proper service. Further, the Circuit Court proceedings predominantly relate to the wastewater treatment facility. Since the Circuit Court proceedings, several issues have arisen with the collection facility portion of the system. Therefore, the Circuit Court proceedings have not appropriately resolved all of the problems with this system, and it would greatly harm the interest and health of Piney Grove's customers and the public at large if the issues are not concurrently decided by the Commission.

9. Considering the pervasiveness of these issues relating to inadequate and improper service, it would be a great disservice to judicial economy to sever the bond issue from the remaining portions of ORS's petitions causing an additional delay in implementing a new proceeding. Since the issues which potentially give rise to the revocation of the bond and the appointment of a receiver arise from the same matters, the issues should not be decided in one proceeding; otherwise, the Commission and the parties will endure superfluous and redundant legal actions and the public will continue to be unnecessarily harmed.

IN THE ALTERNATIVE, ORS REQUESTS THE SURETIES BE JOINED TO THIS PROCEEDING AS PARTIES

10. If the Commission determines that D. Reece Williams, IV, and Elizabeth P. Williams should be parties to this proceeding in order to properly adjudicate the issues, ORS

would move for joinder of these persons, as well as Piedmont Water Co., Inc., pursuant to South Carolina Rules of Civil Proceedure, Rule 19(a) and Rule 21. The Motion to Sever provides that the two individuals, Mr. and Mrs. Williams, should be parties to this action, apparently due to their interest in the action and the impairment or impediment of their ability to protect that interest. As well, Piedmont, as a corporate entity, should be joined based on the same assertions. Joinder of these parties would not deprive the Commission of jurisdiction over these matters and they are subject to service of process. Further, if the Commission determines these parties are necessary, ORS would assert that complete relief could not be granted in their absence.

11. The Commission has previously granted a continuance from the May 26, 2005 hearing date. Mr. and Mrs. Williams are closely aligned with Piney Grove, and Piedmont is the bonding entity for Piney Grove. Joinder of these parties to this proceeding will provide them adequate notice and time for preparation. It will also afford Mr. and Mrs. Williams and Piedmont the opportunity to respond to the petition. Further, their inclusion as parties of record will allow the Commission to grant complete relief to all parties and will assist in the protection of all interests and obligations.

WHEREFORE, ORS requests the following relief:

A. That the Commission find that the inclusion of D. Reece Williams, IV, and Elizabeth P. Williams is not necessary to properly litigate and conclude this petition;

B. That the Commission deny the Respondent's Motion to Sever the petition filed by ORS;

C. That, in the alternative, the Commission grant ORS's Motion to join D. Reece Williams, IV, Elizabeth P. Williams, and Piedmont Water Co., Inc. as necessary parties to this proceeding pursuant to Rule 19(a) and Rule 21, SCRCP and order that they be made a party;

D. That the Commission order any other appropriate action the Commission may deem necessary.

OFFICE OF REGULATORY STAFF

By: _____

Benjamin P. Mustian
Staff Counsel
Post Office Box 11263
Columbia, South Carolina 29211
Telephone: (803) 737-0800

Columbia, South Carolina
May 13, 2005