BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2005-110-W/S - ORDER NO. 2006-59

FEBRUARY 24, 2006

IN RE: Petition of the Office of Regulatory Staff to Request Forfeiture of the Piney Grove Utilities, Inc.'s Bond and to Request Authority to Petition the Circuit Court for Appointment of a Receiver	)))))	ORDER APPROVING CERTAIN RELIEF AND HOLDING OTHER RELIEF IN ABEYANCE

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition of the Office of Regulatory Staff (ORS) to request forfeiture of the Piney Grove Utilities, Inc.'s (Piney Grove's or the Company's) bond, and to request authority to petition the Circuit Court for appointment of a receiver. On the basis of the reasoning as indicated below, we deny at this time the portion of the Petition requesting forfeiture of the performance bond. However, we grant so much of the Petition as would allow ORS to petition the Circuit Court for appointment of a receiver for Piney Grove. In addition, we overrule all outstanding objections to the admission of hearing exhibits and hold that these exhibits shall be admitted into the evidence of this case. By virtue of addressing the receivership issue, we will also discuss the question of whether the Company has failed to provide adequate and proper service. Our conclusion is that the Company has failed to provide adequate and proper service to its customers. We decline to rule on the issue of penalties at this time.

An evening public hearing was held on June 30, 2005, to hear the concerns of the Company's customers. On August 9, 2005, at 10:30 a.m. and reconvening on August 11, 2005, a public hearing was held in the Commission's hearing room, concerning the matters asserted in ORS's petition. The Office of Regulatory Staff was represented by Benjamin P. Mustian, Esquire, and Florence P. Belser, Esquire. Piney Grove was represented by Lewis H. Lang, Esquire. The South Carolina Department of Health and Environmental Control (DHEC) was represented by Julie F. McIntyre, Esquire. Mr. and Mrs. Reece Williams were represented by Hugh W. Buyck, Esquire.

ORS presented the testimony of Mary Smoak and Dennis J. Knight, customers of Piney Grove; Willie J. Morgan, Program Manager for the ORS Water/Wastewater Department; and D. Tracey Wilkes, Environmental Health Manager for DHEC. DHEC presented the testimony of R. Lee Proctor, Project Manager in the Water Pollution Enforcement Section of the DHEC Bureau of Water; Karen L. Ramos, Manager in the Drinking Water Enforcement Section of the DHEC Bureau of Water; and Sonya Johnson, Environmental Health Manager of the DHEC Environmental Quality Control Department. Mr. and Mrs. Williams did not present any witnesses in this hearing. Piney Grove presented the testimony of Claude R. McMillan, Jr., an Engineer for Piney Grove. Various public witnesses also testified before the Commission on August 9, 2005.

II. BACKGROUND

Piney Grove is a privately owned company operating water systems and wastewater collection and treatment systems serving residential customers in Lexington and Richland Counties. Specifically, Piney Grove provides water and wastewater service

to the Franklin Park neighborhood and water service to the Albene Park neighborhood, both located in Richland County. Piney Grove also provides wastewater collection and treatment services to the Lloydwood subdivision in Lexington County. Reece Williams is the sole shareholder of Piney Grove, and Mr. and Mrs. Williams serve as President and Vice-President, respectively, of the affiliated corporation, Piedmont Water Company, Inc. (Piedmont).

III. FINDINGS OF FACT AND EVIDENCE SUPPORTING FINDINGS OF FACT

After thorough consideration of the entire record in the Piney Grove hearing, including the testimony, exhibits, and the applicable law, the Commission makes the following findings of fact with respect to Piney Grove:

1. Piney Grove is a privately owned utility company operating water systems and wastewater collection and treatment systems in Richland and Lexington County and is subject to the jurisdiction of the Commission pursuant to S.C. Code Ann. Section 58-9-10, et. seq. Further, Piney Grove is currently operating under rates last approved by the Commission in Order No. 92-29 issued in Docket No. 90-807-W/S on January 24, 1992.

The evidence supporting this finding is contained in the petition filed by ORS, in the testimony of ORS witnesses Willie J. Morgan and D. Tracey Wilkes, and in prior Commission Orders in the docket files of the Commission, of which the Commission takes judicial notice.

2. Piney Grove is not providing adequate and proper service as required by S.C. Code Ann. Section 58-5-10 et.seq. Several issues were raised by the parties

concerning adequacy and propriety of the service provided by Piney Grove, including billing, blockages, overflows, and compliance with laws and regulations. Testimony from witnesses revealed that consumers have valid complaints concerning billing issues, a lack of responsiveness from Piney Grove, improper disconnections, improper repairs, odors and improper treatment and discharges.

A. Billing

The Commission finds that Piney Grove charges late fees in the amount of Five Dollars ($5) and deposits in the amount of Ninety Dollars ($90). The Commission further finds that Piney Grove requires customers to make payment within fifteen days of the bill's rendering. ORS witness Smoak testified and presented evidence that Piney Grove is not billing its customers in compliance with this Commission's Rules and Regulations, and customers repeatedly testified that Piney Grove charges a late fee of Five Dollars ($5). Tr., Vol. 1, Merits Hearing, Smoak at 81-82 and 85. Evidence was presented that Piney Grove did not follow proper billing procedures by requiring customers to pay their bills within 15 days of the billing date. Several Piney Grove customers also testified that Piney Grove was collecting deposits in the amount of Ninety Dollars ($90) (see Tr. Vol. 1, Night Hearing, Dunn, at 13) and that such amount is improper and in excess of that allowed by regulation. See also the testimony of ORS witness Morgan, Tr., Vol. 1, Night Hearing, at 123. Piney Grove suggested at the hearing that certain instances of overbilling were corrected by crediting customers' accounts; however, no evidence was presented as to the manner in which such credits were made. ORS also presented testimony demonstrating that Piney Grove has charged customers Drinking Water fees in

excess of that allowed by state law. Tr., Vol. 1, Merits Hearing, at 215. Further, ORS presented evidence that improper billing willfully continued even after Piney Grove was notified by ORS that its billing practices were improper. Tr., Vol. 1, Merits Hearing, at 143-145; Hearing Exhibit No. 4, MS-1; Tr., Vol.1, Merits Hearing, at 85.

B. Responsiveness

The Commission finds that Piney Grove consistently and unreasonably delays in responding or willfully fails to respond to customers, ORS, DHEC, and other appropriate entities. The Piney Grove consumers voiced numerous complaints regarding the unresponsiveness of Piney Grove. The customers raised issues of the Company failing to respond to blockages, backups, and phone calls and refusing to investigate complaints. Piney Grove customers also revealed that Piney Grove failed to take responsibility for certain problems and required the customers to hire private plumbers, at their expense and without reimbursement, to investigate sewer problems ultimately determined to be the responsibility of the utility. Tr., Vol. 1, Night Hearing, Worthy, at 15. The Commission also received evidence that the problems relating to the lack of responsiveness began after Piney Grove purchased the system. Mr. Tommy Looper testified at the evening public hearing that prior to Piney Grove operating the system, there were no problems related to responsiveness to resolving service issues; however, Mr. Looper testified that since the transfer of ownership to Piney Grove, such issues have arisen. Tr. Vol.1, Night Hearing, Looper, at 61. Several customers also testified as to difficulty contacting a Piney Grove representative such that the customers are required to "promise payment or threaten legal action" in order to get a response from the Company.

Tr., Vol. 1, Merits Hearing, at 16. Additionally, ORS witness Wilkes addressed several occasions in which DHEC had difficulty in receiving a response from the Company regarding regulation violations and complaints.

C. Disconnections

The Commission finds that Piney Grove has disconnected customers without thirty (30) days notice to either the customer or to the appropriate state agencies. In reaching this finding, the Commission considered testimony from Ms. Crystal Cuffie who stated that she received a disconnection notice from Piney Grove that did not comply with Commission Rules and Regulations. Specifically, Ms. Cuffie testified that she received this notice on July 22, 2005, and the service was disconnected by August 5, 2005. Tr., Vol. 1, Merits Hearing, Cuffie, at 23. Additionally, ORS witness Morgan testified that ORS investigated several disconnections of Piney Grove customers on or about this time. For each of these disconnections, Piney Grove had not provided the customers, DHEC, the Commission or ORS the requisite thirty (30) day notice required by Commission regulations. Tr., Vol. 1, Merits Hearing, Morgan, at 160.

D. Odors

The Commission finds that Piney Grove has operated its system in a manner which fails to minimize the presence of odors emanating from the treatment facility. During the night hearing, the Commission heard several complaints regarding unacceptable odors in the subdivisions served by Piney Grove. See Tr., Vol. 1, Night Hearing, Downs, at 25. The testimony reflected the detection of strong sewer odors at an unacceptable distance from the facility and from the creek into which the treated

wastewater is discharged. The residents testified that the odor increases in the summer. DHEC documents submitted at the hearing evidence that odors were often a primary or contributing complaint when customers called DHEC after receiving no response from Piney Grove.

E. Repairs and Maintenance

The Commission finds that Piney Grove has failed to repair or has inadequately repaired its wastewater treatment and collection system. Several residents testified before the Commission as to collapsed lines and blockages which severely impact the service provided. Customers also complained of yards being dug up and not repaired. ORS Witness Morgan testified as to several instances of repairs and maintenance that need to be made, such as repairing a pump to the wet well, correcting several sinkholes in customers' yards, and removing excessive debris and vegetation from the treatment facility. Tr., Vol. 1, Merits Hearing, Morgan, at 149-150. Additionally, ORS Witness Wilkes testified as to a number of complaints received by DHEC in which Piney Grove unreasonably delayed or failed in making repairs or made repairs which failed to resolve the problem.

F. Improper Treatment

The Commission finds that Piney Grove has consistently failed to properly treat wastewater and has illegally released untreated effluent into the environment. Additionally, the unreasonable and continuing lack of maintenance to the collection facility has resulted in blockages and overflows causing untreated wastewater to be discharged into the streets and storm drains of the various subdivisions, creating health

hazards for the very communities that Piney Grove is designated to serve. ORS Witness Wilkes presented several exhibits that indicated sanitary sewer overflows resulting in discharges into the storm drain system. Hearing Exhibit 17. Further, ORS Witness Morgan presented testimony that Piney Grove did not have an operator for its facility serving the Lloydwood subdivision, as required by Piney Grove's permit and South Carolina law, and, as a result, untreated wastewater was released into a neighborhood creek where children often play. Further, as testified by DHEC witness Proctor, the maintenance deficiencies continued for so long that DHEC had to use state money to employ an operator to minimize the amount of contaminants being discharged from the treatment facility and levied fines against Piney Grove in excess of Four Million Dollars ($4,000,000) as a result of Piney Grove's improper treatment. Tr., Vol. 2, Merits Hearing, Proctor, at 119.

Piedmont currently has a performance bond on file with the Commission for wastewater service in the amount of One Hundred Twenty-Five Thousand Dollars ($125,000). The Commission received evidence that Mr. and Mrs. Williams, officers for Piedmont acting in their personal capacity, executed a personal financial statement as surety on the performance bond ordered in Commission Docket No. 2000-606-W/S. Further, as previously noted, the Commission takes judicial notice of its files in dockets related to Piedmont. In Orders issued under Docket No. 2000-588-W, Piedmont and Piney Grove were consolidated. Therefore, the bond was given, and remains in place, to secure the performance and operations of Piney Grove Utilities, Inc. (See pp. 12-14, infra)

Piney Grove has consented to the appointment of a receiver for the Franklin Park subdivision facility and the Albene Park Subdivision facility. Piney Grove presented evidence detailing the agreement in which Richland County agreed to operate these systems as a temporary receiver. Pursuant to the agreement, the temporary receivership is effective for up to one year, prior to which Richland County may withdraw as a receiver after a one-week notice to the parties. Hearing Exhibit 13.

IV. CONCLUSIONS OF LAW

Based upon the findings of fact contained herein and the record of this proceeding, the Commission makes the following conclusions of law:

1. The Commission concludes that Piney Grove is improperly billing its customers in violation of regulations governing wastewater utilities. Commission Regulation 26 S.C. Code Ann. Regs. 103-532.2 provides that a "maximum of one and one-half percent (1 and ½%) be added to any unpaid balance not paid within 25 days of the billing date to cover the cost of collection and carrying accounts in arrears." Additionally, 26 S.C. Code Ann. Regs. 103-531.1.A provides that a maximum deposit may be required up to an amount equal to an estimated two (2) months (60 days) bill for a new customer or a maximum deposit may be required up to an amount equal to the total actual bills of the highest two (2) consecutive months based on the experience of the preceding twelve (12) months or portion of the year or portion of a year, if on a seasonal basis. Based upon testimony and evidence provided at the night public hearing and merits hearing, the Commission finds that Piney Grove is improperly billing its customers and is charging excessive late fees and deposits. Pursuant to Commission Regulations and based

upon the approved rate structure, the maximum amount that Piney Grove is allowed to charge its customers is a late fee of twenty-three cents ($0.23) for a one month delinquency and a maximum deposit of Thirty Dollars ($30). Piney Grove has knowingly and willfully continued to charge a Five Dollar ($5.00) late fee and Ninety Dollars ($90.00) for deposits, even after the Office of Regulatory Staff notified the Company that these charges were improper. Hearing Exhibit 9. Such practices are unacceptable to this Commission, and we find that Piney Grove violated these requirements.

2. The Commission concludes that the responsiveness of Piney Grove to its customers is unacceptable. Commission Regulations require that complaints concerning the charges, practices, facilities, or service of the utility be investigated promptly and thoroughly. 26 S.C. Code Ann. Regs. 103-516 and 103-538(A). The Commission has serious concerns regarding Piney Grove's willful refusal to be accountable for problems in its system and its unreasonable delay or complete failure to respond to its customers. Because Piney Grove's service is regulated by this Commission, the Company is required to follow its rules and regulations. Piney Grove has ignored these regulations and its customers on many occasions.

3. The Commission finds that the disconnection practices of Piney Grove are in violation of 26 S.C. Code Ann. Regs. 103-535.1, which sets out the ground rules for disconnection of service. By failing to comply with the Commission's regulations regarding proper notice to both the customer and applicable state agencies, Piney Grove has violated disconnection regulations and has knowingly and willfully continued to do

so after being notified of its violations. The Commission finds such actions objectionable and contrary to public policy.

4. The Commission concludes that the odors emanating from the wastewater treatment facility are unacceptable pursuant to 26 S.C. Code Ann. Regs. 103-570.A which provides that "[e]ach utility shall provide sewerage service insofar as practicable free from objectionable odors." Sewerage utilities subject to regulation by the Commission are required to reasonably minimize objectionable odors, and the Commission finds that Piney Grove is not attempting to reduce such problems as required.

5. The Commission concludes that Piney Grove's noncompliance with state law and the resulting effects of that noncompliance is appalling and is in direct violation of the regulations of this Commission. Piney Grove failed to employ a certified operator as required by DHEC regulations. 26 S.C. Code Ann. Regs. 103-570 (A). requires all utilities to "comply with all laws and regulations of State and local agencies pertaining to sewerage service." Piney Grove habitually disregarded the authority of both DHEC and this Commission and the ensuing consequences have led to an unacceptable impact on the environment and the health of South Carolina and its citizens.

6. Piney Grove's failure to provide adequate and proper service has been willful and has continued for an unreasonable length of time. Several customers testified before the Commission that they have experienced problems with the systems operated by Piney Grove for several years. ORS Witness Smoak testified that she began experiencing problems with the sewer system in May 2003. During the night public

hearing, several residents testified that they had experienced problems for up to fifteen to twenty years. The Commission finds that the conditions endured by these customers have existed for an unreasonable length of time by any standards. Additionally, as explained above, Piney Grove has continued to operate its systems in violation of state law after notification by both ORS and DHEC. "A willful act is defined as one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." State v. Bevilacqua, 316 S.C. 122, 129, 447 S.E. 2d 213, 217 (Ct. App. 1994)(citing Spartanburg County Dep't of Social Services v. Padgett, 296 S.C. 79, 82-3, 370 S.E. 2d 872, 874 (1988)). By continuing to operate its facilities and conduct its billing in violation of this Commission's regulation after notification of the unlawfulness, Piney Grove has demonstrated that it specifically intended not to comply with the directives and requirements of this Commission. The Commission finds such misconduct to be willful and without excuse.

7. The various water and wastewater utilities owned by Reece Williams were consolidated under Piedmont in Docket No. 2000-588-W at the request of Mr. Williams; therefore, the bond held by Piedmont covers Piney Grove. As requested by ORS, the Commission takes judicial notice of its files regarding Piney Grove, specifically, Docket No. 2000-588-W. In that Docket, Piedmont Water Company, Inc. filed an application requesting approval to consolidate the stock of several utilities including Piney Grove. In the direct testimony filed in that proceeding, DHEC raised a concern that the "merger" of these systems could result in some compliance problems. Mr. Williams filed rebuttal

testimony as to this assertion by DHEC, and stated that "the object of this petition is not to 'merge' these companies into one company" but rather "the proposed consolidation is to make more efficient the administrative operation of these separate corporations, all of which will retain their separate corporate identity." In Order No. 2001-761, this Commission approved the consolidation "under certain conditions." The Commission did not require that certain conditions be met prior to the consolidation of these utilities; rather, this Commission only required that those conditions be met in the future for the consolidation to be considered proper. While several of the conditions set forth in that docket were not met, the Order previously issued by this Commission clearly allowed such a consolidation, and indicated that the conditions were not a prerequisite. As evidence of this, the Commission notes the fourth condition set out in the Order which provides "all water and sewer systems under Piedmont must become compliant with all applicable and pertinent DHEC regulations," indicating that this requirement is to be satisfied after consolidation. Further, the fifth condition prohibits Piedmont from acquiring any further systems--undoubtedly intended to be a future condition that could not have been satisfied prior to consolidation. See Order No. 2001-761 at 5. Clearly, the Order envisioned the consolidation of these systems prior to the satisfaction of the remaining conditions. Additionally, the Commission has previously accepted the $125,000 bond held by Piedmont as sufficient to cover Piney Grove and the associated utilities and has not objected to such a bond. Finally, Piney Grove, by its own actions, has conceded to this interpretation by failing to file a bond to cover its systems independently of Piedmont and purporting to rely upon the bond filed by Piedmont. Arguing that the

Order does not allow Piedmont to cover the operations of the associated utilities suggests that Piney Grove and Piedmont knowingly misled the Commission and refused to comply with Commission regulations. Such a result would be detrimental to Piney Grove, because it would mean that Piney Grove has willfully and intentionally failed to file the required performance bond and that it continues in such non-compliance. As previously noted, the Commission had no intention to require that Piedmont meet the conditions set forth in the Order prior to consolidation; therefore, the Commission found the consolidation and the ensuing posting of the bond was acceptable. The Commission also reasonably relied upon this action such that it did not further require Piney Grove to file an independent bond. Piedmont's filing of the bond was intended by the applicant and the Commission to cover the services of Piney Grove. To find otherwise would result in an outcome detrimental to this Commission, to Piney Grove's customers, and to the State of South Carolina, and would necessitate a finding that such outcome was purposefully planned and executed by Piney Grove and Piedmont in willful and ongoing violations of this Commission's regulations and the laws of South Carolina. Therefore, the Commission finds that Piedmont's bond is applicable to and covers the operations of Piney Grove.

8. ORS should be granted the ability to petition the Circuit Court for a receiver of the Piney Grove systems. ORS's petition requested that the Commission grant it the ability to petition the Circuit Court for appointment of a receiver in that ORS's enabling legislation, 2004 S.C. Acts 175, did not clearly endow it with such authority. During the hearing, Piney Grove consented to this request and specifically asked this

Commission to give ORS "the ability or authority to go to Circuit Court to get" such a receiver. The Commission finds that Piney Grove has willfully failed to provide adequate and proper service for an unreasonable length of time, based on the facts recounted above. Further, pursuant to 2004 S.C. Acts 175, ORS is the Commission's successor in interest, and ORS should be granted the authority to petition the Circuit Court for appointment of a receiver for Piney Grove, pursuant to S.C. Code Ann. Section 58-5-730 (1976).

9. This Commission must deny the forfeiture of the bond at this time. Although we agree with ORS and find that the Company "failed to provide service without just cause or excuse and that this failure has continued for an unreasonable length of time," as per S.C. Code Ann. Section 58-5-720 (Supp. 2005), we are unable to find sufficient specific evidence in the record quantifying the amounts needed for expenditure to fix the obvious deficiencies in the Piney Grove system. We do not believe that it is appropriate to order forfeiture of the bond without a description of the specific components of the system that need to be repaired and the amounts that would need to be expended to repair or replace said components. To do otherwise would be mere speculation on our part. We have ruled in Conclusion of Law No. 8 that ORS may seek the appointment of a receiver for the Piney Grove systems. In fact, a receiver has been appointed for some of Piney Grove's systems. We also note that the bond was given, and remains in place, to secure the performance and operations of Piney Grove Utilities, Inc. We hold that any duly appointed receiver, or any other appropriate party, may come back before this Commission and argue for forfeiture of the bond at a later date on the basis of

itemized expenditures or losses. We believe that this is the appropriate way to consider forfeiture of the bond in this case.

10. We decline to rule on the issue of penalties at this time, but note that this issue may be considered again at a later date based on the record already before the Commission or as presented in further proceedings.

11. We conclude that all outstanding objections to evidence should be overruled and all outstanding hearing exhibits proposed for admission into the evidence at the hearing shall be admitted into the evidence of this case. First, the Company's relevancy objections to testimony regarding regulations violated by the Company are without merit, since that testimony goes straight to the heart of the issues in this case and is highly relevant. Certainly, whether violations of regulations occurred is, in the final analysis a judgment for this Commission to make, but lay witnesses are certainly entitled to express an opinion on the question, and we are entitled to take their opinion into consideration when making our rulings. Second, the materials under consideration that accompany the testimony of ORS witness Wilkes were from the file on Piney Grove maintained by DHEC, and consisted of complaints, photographs, letters, inspection reports, and other items. The objections lodged against admission of the various items was that the material constituted hearsay evidence, and was therefore not admissible. We disagree. The materials presented are admissible as official records maintained by DHEC, which were presented to the Commission by an employee of DHEC, D. Tracey Wilkes. See SCRE 803(8). Therefore, the objections as to the Wilkes material are without merit, and are overruled. All propounded exhibits which produced an objection and

which were not ruled upon in the hearing are therefore admitted, unless they were previously withdrawn at the time of the hearing.

V. ORDER

Accordingly, the Commission holds as follows:

1. The Office of Regulatory Staff may petition the Circuit Court for the appointment of a receiver for Piney Grove Utilities.

2. Forfeiture of the bond is denied at this time. However, a duly appointed receiver or other qualified party may come back before this Commission at a later date and argue for forfeiture of the bond on the basis of itemized expenditures or losses.

3. Outstanding objections are overruled and outstanding exhibits are admitted into the evidence of this case.

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

G. O'Neal Hamilton, Vice-Chairman

(SEAL)