

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show Cause Proceedings against)	DOCKET NO. 881425-WS
ST. JOHNS NORTH UTILITIES, INC., in)	
St. Johns County for violation of)	ORDER NO. 20762
Chapter 367, F.S.)	
<hr/>	
	ISSUED: 2-17-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 JOHN T. HERNDON

ORDER TO IMPOSE FINE, TO SHOW CAUSE WHY ADDITIONAL FINES
 SHOULD NOT BE IMPOSED, AND TO REQUIRE REFUND

BY THE COMMISSION:

IMPOSITION OF FINE

Commission Order No. 20409, issued December 5, 1988, directed St. Johns North Utilities, ("SJN"), to show cause in writing why it should not be fined up to \$5,000 a day for violation of Section 367.061, Florida Statutes, Florida Administrative Code Rules 25-30.135 and 25-30.550, and Commission Order Nos. 16971 and 17058. That order states that failure to file a timely written response would constitute an admission of the facts alleged and a waiver of any right to a hearing. A written response to the show cause order was to be filed on or before December 27, 1988. SJN has not filed a written response.

We find that SJN, by its failure to file any response to the show cause order, has admitted to the facts alleged therein. The facts described in the show cause order constitute violations of Section 367.061, Florida Statutes, and Florida Administrative Code Rules 25-30.135 and 25-30.550, and Commission Order Nos. 16971 and 17058. These violations are in three subject areas: service outside the utility's authorized service area; collection of unauthorized tax impact charges for contributions-in-aid-of-construction (CIAC "gross-up" charges); and failure to file developers' agreements. The utility has neither filed a written response to the show cause order, nor, despite repeated requests by Commission Staff, complied with applicable requirements. Section 367.161, Florida Statutes authorizes fines up to \$5,000 for each offense and provides each day the violation continues constitutes a separate offense. We find it appropriate to fine SJN \$5,000 for each of the three subject areas, for a total fine of \$15,000.

ORDER TO SHOW CAUSE

Commission Order No. 20409, issued December 5, 1988, also directed SJN to file a written request to implement CIAC gross-up charges and to provide a full written response to specified questions regarding a developer's agreement that the utility had entered. Said request and response were to be

DOCUMENT NUMBER-DATE

01790 FEB 17 1989

FPSC-RECORDS/REPORTING

ORDER NO. 20762
DOCKET NO. 881425-WS
PAGE 2

filed on or before January 4, 1989. SJN has failed to file such request or to provide any written response to the specified questions.

Section 367.161, Florida Statutes authorizes this Commission to fine a regulated utility that knowingly refuses to comply with or willfully violates any Order of the Commission. Based on the foregoing it appears that SJN has failed to comply with Commission Order No. 20409. We, therefore, find it appropriate to order SJN to show cause why it should not be fined up to \$5,000 for each day of its failure to comply with the above-stated portion of Commission Order No. 20409.

REFUND OF TAX IMPACT CHARGES

As previously described, SJN has collected unauthorized CIAC "gross-up" charges. Therefore, we find it appropriate to order SJN to refund the CIAC "gross-up" charges, including interest, that were collected without authorization. Interest should be calculated in accordance with Florida Administrative Code Rule 25-30.360(4), and should accrue from the date that unauthorized CIAC "gross-up" charges were collected to the date of the refund.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that St. Johns North Utilities, Inc., is hereby assessed a fine totalling \$15,000 for violation of Section 367.061, Florida Statutes, Florida Administrative Code Rules 25-30.135 and 25-30.550, and Commission Order Nos. 16971 and 17058, which fine shall be paid to this Commission. It is further

ORDERED that St. Johns North Utilities, Inc., shall show cause, in writing, why it should not be fined up to \$5,000 a day for failure to comply with the provisions of Commission Order No. 20409, issued December 5, 1988, which require a written response to specified questions and a written request to implement CIAC "gross-up" charges. It is further

ORDERED that said written response of St. Johns North Utilities, Inc., must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 13, 1989. It is further

ORDERED that said written response of St. Johns North Utilities, Inc., shall contain specific allegations of fact and law. It is further

ORDERED the the opportunity of St. Johns North Utility, Inc., to file a written response shall constitute its opportunity to be heard prior to a final determination of noncompliance or assessment of penalty by this Commission. It is further

ORDERED that a failure to file a timely written response to this show cause order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDER NO. 20762
DOCKET NO. 881425-WS
PAGE 3

ORDERED that, in the event St. Johns North Utilities, Inc. files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings may be scheduled before final determination of these matters is made. It is further

ORDERED that St. Johns North Utilities, Inc., shall refund all unauthorized CIAC "gross-up" charges, including interest, to the customers from whom they were collected. It is further

ORDERED that the interest on the CIAC "gross-up" charges to be refunded shall be calculated in accordance with Florida Administrative Code Rule 25-30.360(4), and shall accrue from the date that unauthorized CIAC "gross-up" charges were collected to the date of the refund. It is further

ORDERED that the refunds and fines ordered herein shall be completed within 90 days of the date of this Order.

By ORDER of the Florida Public Service Commission,
this 17th day of FEBRUARY, 1989.


STEVE TRIBBLE, Director
Division of Records & Reporting

(S E A L)

DS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 person whose substantial interests are affected by the Commission's order to refund unauthorized charges may file a petition for a formal proceeding, pursuant to Section 120.57, Florida Statutes, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 13, 1989. In the absence of such a petition, the order to refund unauthorized charges shall become effective March 14, 1989.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

ORDER NO. 20762
DOCKET NO. 881425-WS
PAGE 4

If the order to refund unauthorized charges becomes final and effective on March 14, 1989, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer 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 of the effective date 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.

Any party adversely affected by the Commission's final action imposing fines in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting 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 First District Court of Appeal in the case of a water or sewer 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.