

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Notice by WEST ORANGE UTILITY |) | DOCKET NO. 881429-SU |
| (M & M UTILITIES) of intent to abandon |) | ORDER NO. 21397 |
| sewer system in Orange County. |) | ISSUED: 6-16-89 |

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, CHAIRMAN
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER REQUIRING ESCROW OF MONIES AND
 FINING MICHAEL MINTON D/B/A M & M UTILITIES

BY THE COMMISSION:

BACKGROUND

M & M Utilities is a small sewer utility located within the City of Ocoee in Orange County, Florida. M & M Utilities serves approximately 243 equivalent residential connections (ERCs), of which 228 are residential and 15 commercial. On October 17, 1988, this Commission officially received notice, pursuant to Section 367.165, Florida Statutes, by Michael Minton of his intent to abandon M & M Utilities, effective January 1, 1989. During the 76-day period before Mr. Minton's abandonment, we received numerous complaints on the operation and maintenance of M & M Utilities. An on-site engineering investigation was performed by our engineer and it was found that the treatment plant was not properly functioning due to lack of proper maintenance and effluent disposal difficulties. It was also found that Mr. Minton had been accruing fines levied by Orange County for his failure to make his system comply with local environmental standards.

By Order No. 20532, issued December 28, 1988, we ordered Mr. Minton to escrow all accounts receivable and all other revenues associated with M & M Utilities as of December 6, 1988, and through the appointment of a receiver by the Circuit Court. The money to be escrowed was to be used to financially assist the appointed receiver in making the necessary repairs to bring the treatment plant into compliance with Orange County Environmental Standards. On March 1, 1989, the Orange County Circuit Court appointed Southern States Utilities as the receiver of M & M Utilities for the term of one year. Southern States has been operating the utility since that time.

On March 7, 1989, we contacted Mr. Minton to obtain information on the location and terms of the escrow account that was to be set up pursuant to Order No. 20532. Mr. Minton informed us that he had sent out bills at the end of December and, upon the advice of his attorney, had decided to disregard our Order to escrow the accounts receivable.

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SHOW CAUSE ORDER NO. 21047

By Order No. 21047, issued April 14, 1989, we required Michael Minton d/b/a M & M Utilities to show cause in writing within 20 days why he should not be fined \$2500.00 for his failure to establish the escrow account required by Order No. 20532, as well as \$100 for each additional day that the escrow account was not established. According to the 1987 Annual Report filed by M & M Utilities, the gross revenue for that year was \$43,392. Since Mr. Minton bills quarterly, Order No. 21047 required that \$10,848 be escrowed.

Mr. Minton appeared at our April 4, 1989, Agenda Conference, at which we decided to issue show cause Order No. 21047, and stated that he had documentation with him that established that he had used the majority of the revenues he had collected for the running of the utility. He also stated that he had not received Order No. 20532 until a few days after it was issued on December 28, 1988, and, for that reason, he had not known that he was supposed to escrow all the revenues. He said he had sent out the quarterly bills (for October, November and December, 1988) on or about December 22, 1988. Immediately following that Agenda Conference, Mr. Minton submitted copies of cancelled checks and bank statements for the period December, 1988, through February, 1989.

In addition, Mr. Minton filed a timely response to Order No. 21047 which included schedules showing revenue collected and billed revenue that was not collected for the period December, 1988, through February, 1989, and schedules of operating expenses for the same period. Because we believe that Mr. Minton had Order No. 20532 in his possession within five days after it was issued on December 28, 1989, we have given very careful scrutiny to amounts expended after January 2, 1989. We have reconciled all expenses shown in the schedules with cancelled checks. We reviewed the utility's 1988 Annual Report to determine a fair allowance for salaries, rent and transportation expenses. The total operating expense submitted by Mr. Minton is \$7,579. We find it appropriate to adjust this amount by \$2,013, and allow operating expenses of \$5,566 for the period December, 1988, through February, 1989. The total collected revenue submitted by Mr. Minton for the same period is \$7,522.

Based on the utility's 1988 Annual Report, the utility's annual revenue was \$39,223, approximately \$9,806 per quarter. According to the show cause response, total revenue collected and uncollected for the period December, 1988, through February, 1989, is \$7,522 and \$3,195, respectively, for a total of \$10,717. Since the total amount of collected and uncollected revenue is so close to the amount required to be escrowed by Order No. 20532, and the amount of uncollected revenue has not been verified with the current receiver, we find it appropriate to require Mr. Minton to place in escrow \$5,282. This amount represents the difference between the \$10,848 amount ordered to be escrowed by Order No. 20532 and the operating expense allowance of \$5,566 that we find to be appropriate.

It is evident from his show cause response that Mr. Minton

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violated Order No. 20532. In determining an appropriate fine, we have considered the fact that Mr. Minton appeared at our April 4, 1989, Agenda Conference, and produced documentation at that time, as well as the fact that Mr. Minton has filed a timely response to Order No. 21047. In addition, we have considered the fact that Mr. Minton probably did not have possession of a copy of Order No. 20532 until January 2, 1989. Perhaps the most significant factor we have considered is that it is more important to have the funds that should have been escrowed put in escrow now and that any fine not frustrate the escrow of those funds. This is because those funds will go to the receiver of the utility and, in that fashion, will directly benefit the customers of M & M Utilities. Any amount fined will not directly benefit the customers. Yet another factor is that M & M Utilities has been operating at a loss for a period of time. Based upon our consideration of all of these factors, we hereby fine Michael Minton d/b/a M & M Utilities \$250.00 for his violation of Order No. 20532.

This docket shall remain open until Michael Minton d/b/a M & M Utilities establishes the escrow account and deposits the \$5,282 therein, and pays the \$250 fine. The funds placed in the escrow account shall remain there until we give the receiver authority to withdraw those funds. Mr. Minton shall notify this Commission within 10 days of the date of this Order of the establishment of the escrow account and the name of the financial institution and the account number.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that Michael Minton d/b/a M & M Utilities shall escrow \$5,282, the balance unaccounted-for from the amount required to be escrowed by Order No. 20532, and notify this Commission within 10 days of the date of this Order of the name of the financial institution and the account number. It is further

ORDERED that Michael Minton d/b/a M & M Utilities is hereby fined \$250.00 for his failure to establish an escrow account and deposit monies therein as required by Order No. 20532. It is further

ORDERED that this docket shall remain open until Michael Minton d/b/a M & M Utilities establishes the escrow account and deposits \$5,282 therein, and until he pays the \$250.00 fine.

By ORDER of the Florida Public Service Commission
this 16th day of JUNE, 1989.


STEVE TRIBBLE, Director
Division of Records and Reporting

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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 party adversely affected by the Commission's final action 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.