

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff- ) DOCKET NO. 940496-WS  
assisted rate case in Lake ) ORDER NO. PSC-95-0510-FOF-WS  
County by J. SWIDERSKI ) ISSUED: April 26, 1995  
UTILITIES, INC. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER IMPOSING FINE

BY THE COMMISSION:

J. Swiderski Utilities, Inc. (JSUI or utility) is a Class C water and wastewater utility operating the Kings Cove system in Lake County. The Kings Cove system serves approximately 147 water and 143 wastewater customers.

JSUI was purchased in May, 1987, from the Citizens National Bank of Leesberg, and received its certificates on June 27, 1988. When JSUI purchased the utility, it received a customer list from the bank, and continued to serve these customers, until October 10, 1994. On October 10, 1994, JSUI disconnected one of its customer's water service because the customer was allegedly located outside the utility's service area, and the customer could not provide a service contract agreement.

On October 14, 1994, the Commission's Division of Consumer Affairs received a service complaint from a customer of the utility. This water only customer has been served by the utility for six years. The present owner of the utility, Mr. Swiderski, had determined that the complainant was not part of the Kings Cove subdivision as originally platted, and had no right of being a customer of the utility. The utility gave notification in three separate letters to the complainant, that service would be disconnected if verification of an agreement was not provided. No verification was provided. Believing to be within its rights, the utility subsequently discontinued service on October 14, 1994.

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FPSC-RECORDS/REPORTING

We informed the utility on October 14, 18, and 21, 1994, that the above situation was not sufficient cause for the disconnection of a customer's service. The utility refused to reconnect the customer until we threatened the utility with the possibility of fines. On October 26, 1994, sixteen days after service was first disconnected, JSUI reconnected the customer's water service. However, the customer kept turning on its water after each subsequent disconnection. Traditionally, when a utility is transferred or taken over, the new owner accepts the utility and the existing customers on an "as is" basis. Therefore, since this customer was provided service by the prior owner, JSUI should not have interrupted the service. The utility appeared to have violated Rule 25-30.320, Florida Administrative Code, by unjustly disconnecting a customer's water service.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have refused to comply with, or willfully violated, any provision of Chapter 367, Florida Statutes, or any lawful rule or order of the Commission. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act would meet the standard for a "willful violation."

JSUI's conduct in this instance was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order it to show cause why it should not be fined. We stated that:

In our view, "willful" implies intent to do an act, and this is distinct from intent to violate a rule. In order to measure the intent of GTEFL, it is appropriate to examine its actions regarding: (1) the safeguards established to insure compliance with Commission rules; (2) the steps taken, or not taken, to halt destruction of documents sought by the Commission; (3) the systematic destruction of documents in violation of our Rule; and (4) the failure to seek an interpretation of the Rule in question prior to destroying documents. It is uncontroverted that GTEFL adopted a policy of destroying records and willfully implemented it. GTEFL's behavior

in this instance appears to rise to the level of a "willful violation" of the Commission's Rule. Accordingly, such conduct warrants the imposition of a penalty.

We determined that in cutting off the customer's service under the circumstances described, JSUI's conduct, moreover, did arise to a level warranting that a show cause order be issued. Therefore, on January 26, 1995, we issued Order No. PSC-95-0129-FOF-WS, in which, among other things, we ordered JSUI to show cause, in writing, within twenty days, why it should not be fined for violation of Rule 25-30.320, Florida Administrative Code. JSUI's response was due on February 15, 1995. JSUI responded to the show cause order on February 20, 1995.

In its response, JSUI explained the situation leading up to the utility's cutting off the customer's service. As previously stated, JSUI believed the customer was not entitled to service, since the customer was located outside of the utility's territory. In its response, the utility explains that on July 21, 1994, JSUI sent a certified letter to the customer requesting information concerning any signed contracts between the customer and the prior owner of the utility. After receiving no response, JSUI sent a second certified letter to the customer on August 9, 1994, requesting the same information, and stating that if no information was provided, service would be disconnected on October 10, 1994. On September 20, 1994, JSUI sent a third certified letter repeating the information which was contained in the previous two letters. Once again, the customer did not respond. On October 14, 1994, JSUI disconnected the customer's service.

Rule 25-30.320, Florida Administrative Code, sets forth those conditions under which a utility may refuse or discontinue service, as well as conditions which constitute insufficient cause for refusal or discontinuance of service. JSUI's response to the show cause order was not timely filed. It was filed on February 20, 1995, five days after the response was due. That notwithstanding, the utility's explanation of why it violated Rule 25-30.320, Florida Administrative Code, was not sufficient, as it did not offer a proper cause, under the rule, why the disconnection of service occurred. That the customer failed to show proof of a signed contract between the customer and a former owner of the utility is not one of the conditions under which the utility may discontinue water service to the customer. Further, the response did not adequately address JSUI's willful violation of our Staff's directive or of the rule.

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In consideration of the foregoing, we find that JSUI's response to Order No. PSC-95-0129-FOF-WS is not adequate. We further find that JSUI willfully violated Rule 25-30.320, Florida Administrative Code. Consequently, we find it appropriate to fine JSUI \$250.

If JSUI fails to respond to reasonable collection efforts by this Commission, we deem the fine to be uncollectible and hereby authorize referral of this matter to the Comptroller's Office for further collection efforts based on this Commission's finding that, under the aforesaid circumstances, further collection efforts would not be cost effective. Reasonable collection efforts shall consist of two certified letters requesting payment.

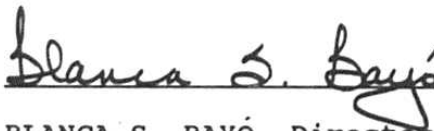
Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that J. Swiderski Utilities, Inc. is fined \$250 for violating Rule 25-30.320, Florida Administrative Code. It is further

ORDERED that this docket shall be closed administratively upon J. Swiderski Utilities, Inc.'s payment of the fine through reasonable collection efforts. It is further

ORDERED that if reasonable collection efforts are unsuccessful, the collection of the fine shall be forwarded to the Comptroller's office and the docket shall be closed administratively.

By ORDER of the Florida Public Service Commission, this 26th day of April, 1995.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

MSN

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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 and/or wastewater 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.