

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Staff-) DOCKET NO. 910276-WS  
Assisted Rate Case in Volusia ) ORDER NO. PSC-93-0049-FOF-WS  
County by PINE ISLAND UTILITY ) ISSUED: 01/13/93  
CORPORATION. )  
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
J. TERRY DEASON

ORDER REINSTATING FINE, GRANTING EXTENSION OF TIME,  
AND ORDER TO SHOW CAUSE

BY THE COMMISSION:

CASE BACKGROUND

Pine Island Utility Corporation (PIU or utility) is a class "C" water and wastewater utility located in northwestern Volusia County. On June 6, 1990, PIU applied for the instant staff-assisted rate case (SARC). By proposed agency action (PAA) Order No. 24643, issued June 10, 1991, we authorized PIU to collect increased rates; assessed and conditionally suspended a \$500 per system fine; and required PIU to comply with Department of Environmental Regulation (DER) requirements, install meters, and provide security for the payment of power bills. Order No. 24643 was protested by PIU customers; however, prior to the scheduled hearing, the utility and the customers reached a settlement, and the customers withdrew their protest. Subsequently, by Order No. PSC-92-0126-AS-WS, issued March 31, 1992, we approved PIU's settlement with the customers and revived Order No. 24643 as a final Order. The time periods for PIU's meeting the requirements of Order No. 24643 began to run when Order No. PSC-92-0126-AS-WS was issued.

In this Order, we find that PIU has failed to meet DER requirements as to its wastewater system, reinstate the \$500 wastewater system fine, grant the utility an extension to install meters and to obtain permits for its water system, and order PIU to show cause why it should not be fined for its continued failure to meet DER requirements for its wastewater system.

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EXTENSION OF TIME AND REINSTATEMENT OF FINE

As indicated above, by Order No. PSC-92-0126-AS-WS, this Commission gave PIU until September 30, 1992, to meet DER requirements for its water and wastewater system. Specifically, PIU was to cure the wastewater system violations listed in the DER Notice of Violation (NOV) discussed in Order No. 24643 and cure the water system problems cited in a Consent Order entered into with DER. If PIU did not meet the DER requirements by the established date, the suspension of the \$500 per system fines we imposed for poor quality of service would be lifted, and the fines reinstated. Additionally, in the settlement agreement with the customers, which we approved in Order No. PSC-92-0126-AS-WS, PIU agreed to make the necessary improvements to bring its systems into compliance with DER regulations.

On October 16, 1992, an engineer from our staff visited PIU's service area and noted several unresolved violations for both the water and wastewater systems.

PIU's president presented evidence that an application for the water plant upgrades had been submitted to the Volusia County Public Health Unit (VCPHU). (We note that since the inception of this case, DER has transferred jurisdiction of its water program to local authorities in certain counties, including Volusia County. VCPHU is a wing of the Department of Health and Rehabilitative Services (HRS) and now has jurisdiction over PIU's water system's compliance with permitting, operating, and environmental standards.) VCPHU found deficiencies in PIU's permit application and on September 8, 1992, requested additional information. On October 13, 1992, PIU responded to that request. VCPHU's engineer indicated that additional clarification of the application was required and results are pending.

Our staff engineer inspected PIU's service territory to check whether meters had been installed for every customer connection. None of the connections within the Pine Island Mobile Home Park were metered.

PIU requested in writing that the deadline to complete the meter installations and to obtain the construction permit for the required upgrades to the water plant be extended to December 31, 1992. PIU contends that recent rains have prevented the installation of the meters. Since PIU has made some progress toward installing meters and making improvements, we shall grant PIU's request for more time. The fine, therefore, will remain suspended until December 31, 1992. However, this extension does

not affect the automatic implementation of the phase II rates approved in Order No. 24643. Thus, PIU shall only charge the base facility portion of the phase II rates.

DER's NOV against PIU for the wastewater facilities remains outstanding. As we noted in Order No. 24643, the primary problem with the wastewater facilities was high turbidity after the clarification process. Other plant violations exist as well. PIU obtained Temporary Operation Permit No. DT64-159061 which expired on July 1, 1991. According to DER, the problems addressed in the NOV were never cured by PIU and are still pending. On June 17, 1992, DER issued a warning letter (#OWL-DW-92-0010) to PIU. PIU did not respond. On August 7, 1992, DER issued a certified letter requesting that PIU provide a response to the warning letter. Again, PIU did not respond. On October 13, 1992, DER issued yet another request for the utility to respond. This request included a warning that if PIU failed to respond, the matter would be referred to DER's Office of General Counsel. According to DER, PIU has yet to respond. Clearly, the utility has not made any attempts to correct the violations at its wastewater plant.

In consideration of the above, we find that PIU has failed to meet DER requirements as to its wastewater system and reinstate the \$500 fine.

SHOW CAUSE

In consideration of PIU's failure to comply with Orders Nos. 24643 and PSC-92-0126-AS-WS and its apparent disregard for meeting DER's requirements, we hereby order PIU to show cause why it should not be fined up to \$5,000 per day for each violation, pursuant to §367.161, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Pine Island Utility Corporation has failed to meet Department of Environmental Regulation requirements for its wastewater system and, therefore, the \$500 fine imposed by Orders Nos. 24643 and PSC-92-0126-AS-WS is reinstated. It is further

ORDERED that Pine Island Utility Corporation's request for an extension of time until December 31, 1992, to install meters and to obtain permits is granted. It is further

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ORDERED that Pine Island Utility Corporation, shall, by the date shown in the "Notice of Further Proceedings" section below, show cause in writing why it should not be fined up to \$5,000 a day for violating Department of Environmental Regulation requirements and for failing to comply with Orders Nos. 24643 and PSC-92-0126-AS-WS as described in the body of this Order. It is further

ORDERED that Pine Island Utility Corporation's written response to this Order must be received as set forth in the Notice below. It is further

ORDERED that Pine Island Utility Corporation's response to this Order must contain specific allegations of fact and law. It is further

ORDERED that Pine Island Utility Corporation's opportunity to file a written response to this Order shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission. It is further

ORDERED that a failure to file a timely response to this 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

ORDERED that in the event that Pine Island Utility Corporation, files a written response which raises material questions of fact and requests a hearing pursuant to §120.57, Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that this docket will remain open pending our staff's monitoring the meter installation and improvement requirements and pending disposition of the show cause portion of this Order.

By ORDER of the Florida Public Service Commission this 13th day of January, 1993.

  
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STEVE TRIBBLE, Director,  
Division of Records and Reporting

( S E A L )

MJF

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 declaring the reinstatement of the \$500 fine 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

The portion of this order requiring the utility to show cause why it should not be fined is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, 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 February 2, 1993.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

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If an adversely affected person fails to respond to the show cause portion of this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.