

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for staff-assisted rate case in
Polk County by Crooked Lake Park Sewerage
Company.

DOCKET NO. 060406-SU
ORDER NO. PSC-07-0275-SC-SU
ISSUED: April 2, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

ORDER INITIATING SHOW CAUSE PROCEEDING

BY THE COMMISSION:

Background

On December 13, 1957, Polk County granted a franchise to Park Water Company to operate a water and wastewater system. In 1978, the wastewater treatment plant and collection system were sold to Warner Southern College and the name was changed to Crooked Lake Park Sewer Company. The current owner purchased this utility on September 30, 1988, under the name Crooked Lake Park Sewerage Company (Crooked Lake or the utility). Polk County came under this Commission's jurisdiction on July 11, 1996.

Crooked Lake is a Class C wastewater utility serving 423 wastewater customers in Polk County. According to the utility's 2005 Annual Report, total gross revenue was \$104,313, and total operating expenses were \$167,266 (for a loss of \$62,953). The utility previously filed for a staff-assisted rate case (SARC) on September 6, 2005, but that case was closed by Order No. PSC-06-0337-PAA-SU, issued April 24, 2006, in Docket No. 050586-SU, In re: Application for staff-assisted rate case in Polk County by Crooked Lake Park Sewerage Company.

On May 19, 2006, Crooked Lake filed a new application for a SARC. The official date of filing was established as July 16, 2006. To ensure that this Commission could issue a final order setting rates within 15 months of the official date of filing as required by Section 367.0814(2), Florida Statutes (F.S.), our staff filed its proposed agency action recommendation on December 27, 2006. In that recommendation, among all the issues for setting final rates and charges, our staff also identified a show cause issue addressing the utility's apparent failure to comply with some requirements of Order No. PSC-99-2116-PAA-SU (First PAA Order).¹ We voted on all issues, except the show cause issue, and directed our staff to bring that issue back at a later date with further clarification. Order No. PSC-07-0077-PAA-SU (Second PAA Order), memorializing our decision, was issued on January 29, 2007.

¹ Order No. PSC-99-2116-PAA-SU, issued October 25, 1999, in Docket No. 980778-SU, In re: Application for staff-assisted rate case in Polk County by Crooked Lake Park Sewerage Company.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

This Order addresses the show cause issue, which we have the authority to consider pursuant to Sections 367.0814, 367.161, and 367.111, Florida Statutes (F.S.).

Show Cause Proceeding

Pursuant to the First PAA Order, this Commission noted that the Department of Environmental Protection (DEP) in its Warning Letter No. WL980009DW53SWD, dated March 25, 1998, had cited the utility for the following violations:

- A. Effluent being discharged off utility property;
- B. Failure to use its south percolation pond;
- C. Overflow of raw wastewater from plant tanks;
- D. Failure to report its discharge violations to the DEP; and
- E. Influent flows exceeding permitted capacity.

We were especially concerned with the discharge of effluent into Crooked Lake, and, at page 7 of the First PAA Order, we specifically stated: "The utility must make DEP mandated improvements."

The First PAA Order further noted that the violations were probably attributable to the utility's infiltration problems, and this Commission approved what it considered sufficient pro forma plant allowance to correct the infiltration problem, and required the pro forma improvements be completed within 180 days. Our staff verified that the pro forma improvements were made within the time allowed, and the docket was closed. Since the time of issuance of the First PAA Order was issued, our staff was not aware of any further discharges off the utility's property until it started its investigations for this current staff assisted rate case.

As stated in the Quality of Service section of staff's SARC recommendation filed on December 27, 2006, a DEP inspector on January 27, 2006, discovered "a gravity hose extending out of the chlorine contact chamber discharging wastewater" such that it entered Crooked Lake in violation of DEP rules. (This violation was not noted in a prior DEP inspection conducted on January 6, 2006). The utility immediately corrected this violation. Although it was immediately corrected, the violation appeared to be identical to the violation noted in the First PAA Order. Therefore, some seven years after the First PAA Order, it appeared to our staff that DEP is again citing the utility for a problem with discharge to Crooked Lake.

When there are apparent violations of DEP rules, this Commission works with DEP. Our staff has been in close contact with DEP, and has advised DEP of the customer concerns expressed at the customer meeting. DEP is primarily responsible for enforcement of Chapter 403, F.S., and we usually defer to DEP's interpretation of that Chapter. However, in the First PAA Order, this Commission specifically noted this same problem with discharge of effluent, and provided for pro forma improvements designed to correct this problem.

As stated in the First PAA Order, the problems with discharge of effluent off utility premises were at that time attributed in large part to excessive infiltration and inflow. The pro forma improvements approved by the First PAA Order and completed by the utility within 180 days of that Order were for the purpose of preventing any further discharge, and, at first, seemed to be successful. However, based on DEP's 2006 Notice of Violation, the utility is again discharging effluent into Crooked Lake. There is no indication that the discharge activity has been continuous since the First PAA Order was issued on October 25, 1999, and, the discharge activity appears to have been immediately corrected when it was discovered on January 27, 2006.

Utilities are charged with the 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). Section 367.161(1), Florida Statutes, authorizes this Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, F.S., or any lawful order of the Commission. Section 367.111(2) addresses quality of service, and requires the utility to:

provide to each person reasonably entitled thereto such safe, efficient, and sufficient service as is prescribed by part VI of Chapter 403 and parts I and II of chapter 373, or rules adopted pursuant thereto.

By again discharging wastewater off the utility premises and into Crooked Lake, we believe that the utility has failed to comply with the intent and above-noted requirements of the First PAA Order. This act of discharging effluent off utility property, and failing to report such discharges would appear to be "willful" in the sense intended by Section 367.161, F.S. In Commission Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled 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., this Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "willful" implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

By letter dated January 26, 2007, the owner of the utility responded to the concerns that had been expressed by staff in the December 27, 2006 SARC recommendation. In that letter, the owner stated that the utility had spent \$150,000 to repair sewer lines, manholes, and to rework land around the percolation ponds. The owner also stated that the utility had been beset upon by Hurricanes Charlie, Francis and Jeanne, and that had caused Crooked Lake to rise to record levels. Because of the flooding from the rise of Crooked Lake, the owner stated:

[T]he sewer company worked 7 days a week and some nights to keep up the sewer system for the 187 homes. We used tanker trucks and pumps to move the influent to other plants or lift stations. We worked for 3 months before the problem got improved. We had no help from Polk County or anyone.

During the time after Hurricane Charlie, the owner stated that the utility spent “80,000 dollars more than it received in income,” and that “there has not been any payroll to any person issued by Crooked Lake.” A report from Pickett Engineering, Inc. appears to confirm the problems the utility had with flooding, and states: “In spite of the flooding conditions, the owner maintained the treatment of the raw sewage by the plant but the flow volume resulted in discharges of treated effluent from the disposal ponds.” Pickett Engineering, Inc. concluded that “as of May 31, 2006, the level of Crooked Lake has receded to the point where the plant can now properly operate.”

Although we sympathize with the problems the utility has faced, we find that the continued pattern of disregard for our Orders (and DEP rules) warrants more than just a warning. We find that show cause proceedings are warranted. We are especially concerned with the re-occurrence of discharge of effluent into Crooked Lake. Accordingly, Crooked Lake shall show cause in writing, within 21 days, why it should not be fined \$500 for its apparent failure to comply with the requirements of the First PAA Order to cease discharging effluent off its property and into areas such that it enters Crooked Lake.

We find the proposed \$500 penalty, coupled with the 50% annual reduction in salary (\$12,000 per year that we ordered in the Second PAA Order), is appropriate for a utility of this size with similar violations. The annual reduction in salary of \$12,000 will continue until the utility demonstrates in a future rate proceeding that the management of the utility has improved such that a higher salary is warranted. Also, because DEP is pursuing its own complaint against the utility, we believe that the DEP proceedings for the Chapter 403 violations are adequate.

Based on the above, the following conditions shall apply:

1. The utility’s response to the show cause order shall contain specific allegations of fact and law;
2. Should Crooked Lake file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, a further proceeding will be scheduled before a final determination of this matter is made;
3. A failure to file a timely written response to the show cause order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue;
4. In the event that Crooked Lake fails to file a timely response to the show cause order, the fine shall be deemed assessed with no further action required by this Commission;
5. If the utility responds timely but does not request a hearing, a recommendation shall be presented to this Commission regarding the disposition of the show cause order; and

6. If the utility responds to the show cause order by remitting the fine, this show cause matter shall be considered resolved

Although payment of the fine would resolve this show cause proceeding, nothing prevents this Commission from again initiating show cause proceedings if we discover that the utility is again improperly discharging effluent into Crooked Lake.

Further, the utility shall be put on notice that failure to comply with Commission orders, rules, or statutes will again subject the utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Crooked Lake Park Sewerage Company shall show cause in writing, within 21 days of the date of this Order why it should not be fined \$500 for its apparent failure to comply with the requirements of Order No. PSC-99-2116-PAA-SU to satisfy the violations listed by the Department of Environmental Protection in its Warning Letter No. WL980009DW53SWD, dated March 25, 1998. It is further

ORDERED that any response shall comply with the conditions as set forth in the body of this Order and shall be filed within 21 days of the date of issuance of this Order. It is further

ORDERED that if Crooked Lake Park Sewerage Company pays the \$500 fine, the docket shall be closed administratively. If the utility timely responds in writing to this Order to show cause, the docket shall remain open to allow for the appropriate processing of the response.

By ORDER of the Florida Public Service Commission this 2nd day of April, 2007.



ANN COLE
Commission Clerk

(S E A L)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 23, 2007.

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 and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to 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 Office of Commission Clerk, 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.