

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show Cause Proceedings)	DOCKET NO. 881425-WS
against St. Johns North Utility Corp.))	ORDER NO. 21195
for violation of Chapter 367, F.S.)	ISSUED: 5-8-89

The following Commissioners participated in the disposition of this matter.

GERALD L. GUNTER
JOHN T. HERNDON
THOMAS M. BEARD
BETTY EASLEY

ORDER TO DENY MOTION
AND TO SET HEARING

BY THE COMMISSION:

BACKGROUND

Order No. 20409, issued December 5, 1988, directed St. Johns North Utility Corp. ("SJN" or "utility"), to show cause in writing why it should not be fined up to \$5,000 a day for each 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. The violations described in Order No. 20409 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. As described in that order, SJN had failed to respond to questions and comments regarding the alleged violations despite repeated and longstanding opportunities and promises to comply. This show cause order states that failure to file a timely written response would constitute admission of the facts alleged to constitute violations 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 did not file a written response.

Order No. 20409 also directed SJN to file a written request for authorization to implement tax impact charges for contributions-in-aid-of-construction, (CIAC "gross-up" charges), and to provide a full written response to Commission staff's July 29, 1988 written comments and questions within 30 days. Order No. 20409 further required SJN to file an application for extension of service territory, pursuant to Section 367.061, on or before March 6, 1989. SJN has not complied with these requirements.

On February 17, 1989, this Commission issued Order No. 20762, entitled "Order to Impose Fine, To Show Cause Why Additional Fines Should Not be Imposed, and To Require Refund". Section 367.161, Florida Statutes, authorizes fines up to \$5,000 for each offense and provides that each day the violation continues constitutes a separate offense. In view of the utility's violations in three subject areas and failure to file a written response to the show cause order or comply, despite with applicable requirements despite repeated requests, Order No. 20762 imposed a fine of \$5,000 for each subject area, for a total fine of \$15,000. Order No. 20762 also directed

DOCUMENT NUMBER-DATE

04531 MAY-8 1989

FPSC-RECORDS/REPORTING

ORDER NO. 21195
DOCKET NO. 881425-WS
PAGE 2

SJN to refund all unauthorized CIAC "gross-up" charges, including interest, to the customers from whom they were collected. The order directed payment of the penalty and refund of the charges within 90 days.

Order No. 20762 also directed SJN to show cause in writing why it should not be fined up to \$5,000 a day for failure to comply with the provisions of Order No. 20409 which required a written response to specified questions and a written request to implement CIAC "gross-up" charges. That written response was to contain specific allegations of fact and law and to be filed on or before March 13, 1989. This second show cause order stated that, in the event SJN files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before final determination of these matters is made.

On March 6, 1989, SJN filed a document entitled "Motion for Rehearing, Reconsideration, and for Leave to Amend," hereinafter referred to as "Motion". The Motion requests rehearing and reconsideration of Order No. 20762. The first paragraph alleges that the fines assessed are excessive and unjust. A second allegation is that SJN has not knowingly refused or willfully violated any orders of this Commission or applicable rules, regulations, or statutes, but has "sustantively (sic) complied with all requests made of it subject to its ability to respond within the time frames requested." The third and final paragraph of the motion requests leave to amend and supplement "this request". The basis stated for the request for leave to amend and supplement is that Order No. 20762, issued February 17, 1989, was not mailed until February 21, 1989; and that Joseph Warren, SJN's attorney, "was not provided a copy notwithstanding his previous appearance and receipt of the above referenced Order was further delayed by the time required to mail the same." The Commission's records indicate that Order No. 20762 was sent to SJN on February 21, 1989, at the address included in the most current water and sewer directory list. Joseph Warren had not previously filed written notice of his appearance in this Docket.

RECONSIDERATION AND REHEARING

The purpose of a Motion for Reconsideration is to give the Commission an opportunity to consider matters of fact or law in the record which it failed to consider or misapprehended. The arguments offered by SJN do not assert such matters. Instead they refer to matters outside the record and describe dissatisfaction with the Commissions' decision. No record-based points of error or omission are raised. No purpose would be served by reconsideration under these circumstances. Therefore, we find it appropriate to deny the request.

LEAVE TO AMEND

The Motion filed by SJN requests permission to amend and supplement its request for reconsideration of Order No. 20762. SJN does not specify what purpose amendment would serve. The motion alleges that the utility has not knowingly failed to

ORDER NO. 21195
DOCKET NO. 881425-WS
PAGE 3

comply with Commission requirements and objects to provisions of Order No. 20762 that impose penalties. The allegation of SJN's compliance will be addressed in the hearing established by later provisions of this Order. Regarding the penalties, SJN did not exercise its opportunity for a hearing on the show cause order that resulted in the imposition of penalties in Order No. 20762. It would not be appropriate to allow the utility to supplement the record in that case. Therefore, we find it appropriate to deny the Motion for Leave to Amend.

Another provision in Order No. 20762 requires that SJN refund all unauthorized CIAC "gross-up" charges, including interest, to the customers from whom they were collected. The pleading filed by SJN does not contain an objection, or even a specific reference to the refund. No request for an administrative hearing on the refund is stated. Under these circumstances, there is no reasonable basis to construe the Motion for Leave to Amend as having any applicability to the refund order. Therefore, we find it appropriate to reaffirm the provisions of Order No. 20762 and direct SJN to refund said charges.

ESTABLISHMENT OF HEARING

Order No. 20762 is the Commissions' order to show cause why additional fines should not be imposed for SJN's failure to comply with provisions of Order No. 20409 which require a written response to specified questions and a written request to implement CIAC "gross-up" charges. The Motion filed by SJN states that SJN "has not knowingly refused or willfully violated any Order of this Commission, or applicable rules or statutes and has substantively (sic) complied with all requests made of it subject to its ability to respond within the time frames requested." This allegation may be construed as raising a material question as to SJN's compliance with the aforesaid provisions of Order No 20409. Therefore, we find it appropriate that the provisions of Commission Order No. 20762 which direct SJN to show cause why additional fines should not be imposed be set for hearing in accordance with Section 120.57, Florida Statutes.

WHEREFORE, in consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that St. Johns North Utility Corp.'s Request for Reconsideration and Rehearing is denied. It is further

ORDERED that St. Johns North Utility Corp.'s Motion for Leave to Amend is denied. It is further

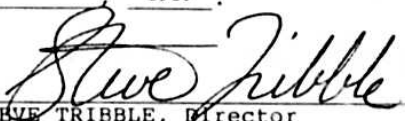
ORDERED that the provisions of Order No. 20762 directing St. Johns North Utility Corp. to pay penalties and to refund unauthorized CIAC "gross up" charges, including interest, are hereby reaffirmed. It is further

ORDERED that the portion of St. Johns North Utili'. Corp.'s response addressing those provisions of Order No. 20762, which directed the utility to show cause why additional fines should not be imposed, as discussed in the body of this

ORDER NO. 21195
DOCKET NO. 881425-WS
PAGE 4

order, be set for hearing.

By ORDER of the Florida Public Service Commission
this 8th day of May 1989.


STEVE TRIBBLE, Director
Division of Records & Reporting

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NOTICE OF 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 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.