

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show cause proceedings against )	DOCKET NO. 881345-WS
GOLDEN BAY UTILITIES CORPORATION, INC., )	ORDER NO. 21343
for violation of Sections 367.111(2), )	ISSUED: 6-6-89
367.071, and 367.165, F.S. )	

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman  
 BETTY EASLEY  
 JOHN T. HERNDON  
 GERALD GUNTER  
 THOMAS BEARD

ORDER REFERRING FINES  
AND  
DIRECTING INVESTIGATION

BY THE COMMISSION:

BACKGROUND

Commission Order No. 20761, issued February 17, 1989, imposed a \$3,000 fine against Golden Bay Colony Utility Corp., ("Golden Bay"), for violations described in Order No. 20286, issued November 7, 1989. The violations are in three subject areas: failure to provide safe, sufficient and efficient service; failure to comply with certificate transfer requirements; and abandonment without notice. Fines were to be paid to this Commission on or before March 22, 1989. No payment has been received.

On March 27, and March 29, 1989, Commission staff sent a certified letter to representatives of Golden Bay advising that the matter would be subject to formal collection proceedings absent payment of the fine. On April 10, 1989, this Commission received a letter from attorney Paul Probst. Mr. Probst states that his firm represents Golden Bay and received the March 29 letter sent to Mr. Frank Baker. The letter requests additional time to pay the fines imposed by this Commission.

The basis for this request is that his client considers the payment of this Commission's penalties to be the responsibility of Intercoastal Investment Group, Inc. The attorney states that on March 10, 1988, Messers White and Baker, the owners of Golden Bay, sold the Golden Bay corporation to the Intercoastal Investment Group, Inc., which was owned by Messers Murray and Busch. He further states that Intercoastal was to repair the plant and arrange to transfer state and local licenses. When Intercoastal failed to perform, Baker and White filed suit in Circuit Court to rescind the contract and retake possession of the water and sewer plants. On March 7, 1989, a default was entered against Intercoastal. A circuit court hearing will be held on Volusia County's objection to entry of final judgment in the case. The County's objection states that the operational difficulties experienced by the Golden Bay water and sewer plants predate the time that the Intercoastal Investment Group assumed control of the plants.

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The attorney for White and Baker further states that he intends to seek a judgement against Intercoastal for all fines placed against Golden Bay and/or the water and sewer plants as a result of Intercoastal's failure to comply with the sales transaction. Therefore, he requests additional time to both obtain possession of the plants and bring them into compliance and to seek recovery of the penalties from Intercoastal.

Golden Bay Colony Utility Corp. is the certificate holder of record. The Order granting the certificate states that the corporate officers were Baker and White.

#### REFERRAL OF FINES

Messers Baker and White were corporate officers when Golden Bay experienced the service problems that form the basis of the show cause order. Messers Baker and White were likewise officers of Golden Bay at the time of the transfer. No transfer application was filed and the service problems continued after the transfer.

Pursuant to Section 367.071, Florida Statutes, and Rule 25-30.040, Florida Administrative Code, it is the responsibility of the transferor to file an application for approval of a transfer. In Order No. 21095, issued April 21, 1989, we assessed a penalty against the transferee when a corporation, as opposed to merely the corporation's assets, were transferred. We supported this assessment with a finding that, while the transfer application should have been completed before the transfer, it remained the responsibility of the transferee. (Application for transfer of majority organizational control of Lindrick Service Corporation in Pasco County to Joseph R. and Marlene B. Borda, Docket No. 881256-WS).

This case also involves transfer of a corporation as opposed to the corporate assets. However, in view of its unique circumstances, particularly, the impending rescission of the contract selling the corporation to Intercoastal, we do not find it appropriate to delay action to collect fines from Messers Baker and White.

The fine assessed against Golden Bay Colony Utilities Corp., pursuant to Order No. 20761, issued February 17, 1989, remains unpaid. This Commission has made reasonable efforts to communicate with the utility and collect the fine. Further attempts to collect would not be cost effective. Therefore, we find it appropriate to refer this matter to the Comptroller's Office. They may pursue collection or give this Commission permission to write off the outstanding fines as uncollectable.

#### INVESTIGATION TO SECURE COMPLIANCE

Golden Bay has demonstrated a long term failure to comply with Chapter 367, Florida Statutes. The service deficiencies outlined in the original show cause order remain. Order 21041, issued April 13, 1989, fined Golden Bay \$2,500 for failure to comply with 1986 annual report requirements.

In view of the utility's ongoing noncompliance and extended failure to provide utility service to its customers, despite imposition of penalties, we find it appropriate to investigate measures to secure compliance. Such measures could include initiation of further show cause proceedings or other

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measures to impose a fine on the utility, on a daily basis, pending its compliance with applicable requirements. Therefore, we find it appropriate that this docket remain open.

WHEREFORE, in consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that, the fines imposed pursuant to Order No. 20761 shall be referred to the Comptrollers Office to either pursue collection or give this Commission permission to write off the outstanding fines as uncollectable. It is further

ORDERED that Docket No. 881345-WU shall remain open for further investigation to assure compliance with Chapter 367, Florida Statutes.

By Order of the Florida Public Service Commission this 6th day of JUNE, 1989.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

DAS (3178L)

by: Kay Selzer  
Chief, Bureau of Records

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.