

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)	DOCKET NO. 871308-WU
proceedings against, and investigation)	ORDER NO. 23312
into possible overearnings by, SEBRING)	ISSUED: 8-7-90
COUNTRY ESTATES WATER COMPANY in)	
Highlands County)	
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER DECLARING FINE UNCOLLECTIBLE AND
 REFERRING IT TO COMPTROLLER'S OFFICE

BY THE COMMISSION:

By Order No. 18592, issued December 23, 1987, this Commission required Sebring Country Estates Water Company (SCE) to show cause why it should not be fined up to \$5,000 per day for numerous alleged violations of Chapter 367, Florida Statutes. On January 23, 1988, SCE filed a written response to that Order, which raised questions of fact and requested that we either dismiss the show cause proceedings or grant SCE a formal hearing pursuant to Section 120.57, Florida Statutes. A formal hearing was held regarding the alleged violations on July 15, 1988, in Highlands County, Florida.

By Order No. 20137, issued October 10, 1988, we found SCE in violation of three separate counts of Section 367.111(2), Florida Statutes, and one count of Section 367.171, Florida Statutes. Accordingly, we assessed a penalty of \$103,000 against SCE. Further, we also ordered SCE to submit a description of the territory actually served by it as of July 15, 1988, and to show cause why we should not revoke Certificate No. 420-W.

On December 22, 1988, SCE filed an offer of settlement. SCE suggested that the fine be reduced from \$103,000 to \$3,000 and stated that, if the fine were reduced as requested, it would submit a territorial description of its certificated area within thirty days of our approval of its offer and have a

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ground pressure tank installed and operating within sixty days of such approval. SCE's offer failed to address the show cause provisions of Order No. 20137.

By Order No. 20781, issued February 29, 1989, we rejected SCE's settlement offer and revoked Certificate No. 420-W.

On March 7, 1989, SCE filed a timely motion for reconsideration of Order No. 20781. In its motion, SCE argued that it has always attempted to provide quality service. However, it listed a number of expenses for which it was liable, including expenses for all of the repairs it has made, for legal, accounting and engineering fees. In addition, SCE listed approximately \$85,000 in outstanding mortgages on its systems. SCE also argued that it was on the brink of bankruptcy, that it still intended to go forward with a proposed transfer to Heartland Utilities, Inc. (Heartland) and that SCE's request that we reduce the fines was not an attempt by it to "walk away from the sale . . . with a significant profit." Further, SCE stated that, notwithstanding our rejection of its settlement offer, SCE has made significant progress toward installing the Department of Environmental Regulation-required ground storage tank. Finally, SCE submitted a legal description of its Sebring Country Estates system service territory and stated that a legal description of the DeSoto system would be filed as soon as it was completed.

By Order No. 21032, we rejected SCE's motion for reconsideration of Order No. 20781.

During the pendency of this proceeding, SCE and Heartland applied for a transfer of Certificate No. 420-W from SCE to Heartland. By Order No. 22043, issued October 10, 1989, we revived Certificate No. 420-W and approved the transfer.

The total purchase price for the system was \$115,000. According to the closing statement, \$79,349.82 of this amount went toward satisfying the mortgages outstanding against SCE, \$1,073.87 was applied toward taxes for 1988, \$371.91 was prorated toward taxes for 1989, \$7,678 went to this Commission for regulatory assessment fees and late payment penalties, and \$6,998 in customer deposits were remitted to Heartland. The remaining amount, or \$19,528.40, was placed in trust with SCE's attorney for disbursement to SCE's creditors, many of whom agreed to accept less than payment in full. After satisfying all of the creditors, nothing remains of the purchase price.

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Since SCE is a corporation, and is without any remaining assets, it does not appear that it will be able to pay the fine. The only way that we could realistically pursue this matter further would be to file a petition for enforcement in circuit court and try to "pierce the corporate veil." In order to "pierce the corporate veil," we would have to show, at a minimum, that SCE was an "alter ego" or "mere instrumentality" of its owner, and that the corporate entity was used for some improper purpose. Dania Jai-Alai Palace, Inc. v. Sykes, 450 So.2d 1114, 1117 (Fla. 1984)

Because it is questionable, at best, whether we would be able to "pierce the corporate veil," and since SCE came away from the transfer empty-handed anyway, we find it appropriate to declare the fine uncollectible and refer it to the Comptroller's office for permission to "write it off".

It is, therefore,

ORDERED by the Florida Public Service Commission that the fine assessed against Sebring Country Estates Water Company is hereby declared uncollectible. It is further

ORDERED that the fine be referred to the Comptroller's office for permission to "write off" the debt. It is further

ORDERED that Docket No. 871308-WU be and is hereby closed.

By ORDER of the Florida Public Service Commission
this 7th day of AUGUST, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

by: Kay Flynn
Chief, Bureau of Records

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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 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.