

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the effect) DOCKET NO: 871206-PU
of 1986 Federal Tax Reform for 1988)
))

In re: Investigation into the) DOCKET NO: 890430-PU
imposition of a penalty for failure to) ORDER NO. 23465
comply with the provisions of Rule) ISSUED: 9-11-90
25.003(4), F.A.C.)
))

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
FRANK S. MESSERSMITH

ORDER NOT ASSESSING PENALTIES, NOT ASSESSING PENALTIES
AND WAIVING REPORT REQUIREMENT, DISCONTINUING COLLECTION
EFFORTS, AND ASSESSING FINES

BY THE COMMISSION:

BACKGROUND

In Orders Nos. 21174 through 21193, issued May 8, 1989, the Commission required numerous water and wastewater utilities to show cause why they should not be fined for failure to timely file their tax savings reports as was required by Rule 25-14.003(4), Florida Administrative Code. All of the following utilities, except Edgewater Utilities, Inc., were so ordered to show cause: Seacoast Utilities Corp. (Seacoast), Sun Country Estates (Sun Country), Utility Systems, Inc. (Utility Systems), East Marion Sanitary Systems, Inc. (East Marion), East Marion Water Distribution, Inc. (East Marion), Aqua Pure Water Company (Aqua Pure), North Central Florida Utilities, Inc. (NCFU), Marico Properties, Inc. (Marico Properties), Edgewater Utilities, Inc. (Edgewater), First Coast Utilities, Inc. (First Coast), Gumbo Limbo Enterprises (Gumbo Limbo), Hideaway Service, Inc. (Hideaway), LTB Utility, Inc. (LTB), Magnolia Manor Water Works (Magnolia Manor), Radice

DOCUMENT NUMBER-DATE
08110 SEP 11 1990
FPSC-RECORDS/REPORTING

ORDER NO. 23465
DOCKETS NOS. 871206-PU & 890430-PU
PAGE 2

Corp. (Radice), Golden Bay Colony Utilities Corp. (Golden Bay). With the exception of Aqua Pure, East Marion, Marico Properties, and NCFU, none of the utilities responded in writing to its respective show cause order. Since the orders to show cause required that a response contain specific allegations of law and fact, the responses filed by these utilities were inadequate. The Commission has not assessed a fine against any of the subject utilities except Golden Bay. A fine of \$1,250 was assessed against Golden Bay by Order No. 21620, issued July 28, 1989.

This Order disposes of the question of whether to fine the above-listed utilities and whether to forego collecting the fine previously assessed against Golden Bay.

PENALTY NOT ASSESSED

East Marion: A penalty shall not be assessed against East Marion. While the penalty should be \$69.00 for each East Marion system, the reports have been received. The reports were filed late due to the death of the owner. Because of the latter circumstance and since the goal of getting the report has been achieved, no fine shall be assessed.

Seacoast: A penalty shall not be assessed against Seacoast. In December of 1988, the assets of Seacoast were sold to a governmental authority which is exempt from regulation by the Commission. The report form was never forwarded to the former owners, so they were not able to file a timely response. In a letter dated April 19, 1989, the former owners stated that the utility earned below its authorized rate of return in 1988 and therefore would have had no tax savings. Because it appears there would have been no tax savings and because the utility would have been given an automatic 30-day extension to April 30, 1989, a penalty against Seacoast shall not be assessed.

Sun Country: A penalty shall not be assessed against Sun Country. The utility was repossessed in October, 1988. Consolidated Vista, the previous owners, did not receive the original report form because it was mailed to Ensign Bank. Consolidated Vista requested and was mailed another report form on March 16, 1989, and filed a timely response on March 25, 1989. Therefore, a penalty against Sun Country shall not be assessed.

ORDER NO. 23465
DOCKETS NOS. 871206-PU & 890430-PU
PAGE 3

Utility Systems: A penalty shall not be assessed against Utility Systems. This utility is now owned by Windstream Utilities, and the tax savings report was included with Windstream's report. Therefore, a penalty shall not be assessed.

PENALTIES NOT ASSESSED AND REPORT REQUIREMENT WAIVED

Edgewater: All attempts to get a report from this utility have been unsuccessful. Edgewater has never provided service within its territory and has been dissolved as a corporation. Its certificate was cancelled by Order No. 22904, issued May 7, 1990. Since by that Order all efforts to collect regulatory assessment fees have been exhausted and the annual report requirements were waived, the tax reporting requirement is also waived and no fine is assessed.

First Coast: First Coast was transferred to the City of Jacksonville in 1988. The sale was acknowledged by this Commission in Order No. 21196, issued May 8, 1989. Efforts to collect the tax report for this time-period would be futile and, therefore, we waive the tax reporting requirement and no fine is assessed.

Gumbo Limbo: This utility was abandoned in 1988. A receiver was appointed by the Circuit Court on September 1, 1988. This fact was noted in Order No. 20281, issued November 7, 1988, whereby we closed the abandonment docket. This Commission's audit of the books of the utility revealed a negative rate base. Since the utility was abandoned and there would have been no tax savings, the tax reporting requirement is waived and no fine is assessed.

Hideaway: By Order No. 21003, issued April 7, 1989, the \$84 penalty imposed on this utility for not filing the 1986 annual report was waived due to the death of its owner. Because the utility has since made efforts to comply with reporting requirements and because there would have been no tax savings, the tax reporting requirement is waived and no fine is assessed.

LTB: This utility was foreclosed upon in early 1988. It has since been transferred to BFF Corporation as approved by Order No. 22371, issued January 8, 1990. Since the utility's income statement showed gross revenues of only \$19,724.62 and a net operating loss of \$8,936.47 for 1988, there would have been

ORDER NO. 23465
DOCKETS NOS. 871206-PU & 890430-PU
PAGE 4

no tax savings. Therefore, the tax reporting requirement is waived and no fine is assessed.

Magnolia Manor: This utility was "grandfathered" effective January 19, 1988, by Order No. 18707. Since that time the utility has been abandoned and USA Utilities, Inc., has been appointed receiver. Because there would have been no tax savings in this case, the tax reporting requirement is waived and no fine is assessed.

DISCONTINUANCE OF COLLECTION EFFORTS

Golden Bay formerly provided water and wastewater service in Volusia County. In Order No. 21620, issued July 28, 1989, this Commission assessed a fine against Golden Bay to accrue at the rate of \$3.00 per day to a maximum of \$1,250 for its failure to file its 1988 annual tax savings report

Previously, by Order No. 22548, issued February 14, 1990, in Docket No. 881345-WS, the Commission requested that the Comptroller's office discontinue efforts to collect two fines that had been assessed against Golden Bay: The first by Order No. 20431, issued February 14, 1990, because of the utility's failure to file its 1986 annual report; the second by Order No. 20761, issued February 17, 1989, for violating several other Commission rules. The Commission discontinued efforts to collect those fines because Golden Bay was purchased by Volusia County in late 1989 and Volusia County started operating the utility in early 1990.

The circumstances that led to our discontinuing our efforts to collect the two previously- mentioned fines pertain equally to this instance with the tax savings report. The failure of Golden Bay to file its 1988 tax savings report occurred before Volusia County acquired effective control over Golden Bay. Volusia County did not assume the utility's previously existing fines, even though it did pay approximately \$7,000 of the utility's unpaid bills. Therefore, we shall discontinue collection efforts against Golden Bay and waive the report requirement.

FINES ASSESSED

Radice: Radice has neither filed a report nor responded in writing to the show cause order. The utility filed a notice of abandonment in Docket No. 890914-SU, but it has since withdrawn the notice as it applies to one of its two systems.

ORDER NO. 23465
DOCKETS NOS. 871206-PU & 890430-PU
PAGE 5

We hereby fine Radice \$3.00 a day for each day the report is late up to a maximum of \$1,250. As the utility has reached that maximum as of the date of our vote, \$1,250 is the correct amount of the fine. Furthermore, if the utility does not pay the fine after reasonable collection efforts, the fine should be deemed uncollectible and the matter should be referred to the Comptroller's office for further disposition. Reasonable collection efforts shall consist of mailing two certified letters to the utility's last known address.

Aqua Pure, Marico Properties, and NCFU: Aqua Pure and Marico Properties were both given extensions to June 15, 1989, to file their tax savings reports. In a response to the show cause order, the owner of both systems, Mr. Michael D. Blake, stated that it was his intention to file the reports at the same time the annual reports were filed. Both annual reports were received by the Commission on June 5, 1989. However, the tax savings reports were not included.

North Central Florida Utilities, Inc., was purchased by A. P. Utilities, Inc., which is also owned by Michael D. Blake; and NCFU's certificate was transferred by Order No. 21762, issued August 21, 1989. In a letter dated March 27, 1989, Mr. Blake stated that the tax savings report for NCFU would be handled under A. P. Utilities, Inc. No report has been received.

In the utilities' response to the show cause order, it was asserted that the imposition of a fine on the three separate utilities would impose a severe financial hardship; however, no attempt has been made to alleviate the alleged hardship by meeting the reporting requirement. Since all three utilities are jointly owned by Mr. Blake, we hereby fine the three as one in the amount of \$3.00 per day for each day the reports are late up to the maximum of \$1,250. Since the \$1,250 maximum has already been reached, this is the amount of the fine assessed. Furthermore, if the fine has not been paid after reasonable collection efforts, it should be deemed uncollectible and the matter should be referred to the Comptroller's office for further disposition. Reasonable collection efforts shall consist of mailing two certified letters to the last known address of the utilities.

DOCKETS CLOSING

As the only matters left to be administered in this docket are the reasonable collection efforts of the fines imposed

ORDER NO. 23465
DOCKETS NOS. 871206-PU & 890430-PU
PAGE 6

against the utilities mentioned in the immediately preceding section, Docket No. 890430-PU can be closed after said reasonable collection efforts are undertaken. Docket No. 871206-PU, however, must remain open until the Florida Cities Water Company tax savings refund has been completed and verified.

It is, therefore,

ORDERED by the Florida Public Service Commission that no penalties for failure to file tax savings reports shall be assessed against Seacoast Utilities Corp., Sun Country Estates, Utility Systems, Inc., East Marion Sanitary Systems, Inc., East Marion Water Distribution, Inc., Edgewater Utilities, Inc., First Coast Utilities, Inc., Gumbo Limbo Enterprises, Hideaway Service, Inc., LTB Utility, Inc., and Magnolia Manor Water Works. It is further

ORDERED that the reporting requirement of Rule 25-14.003(4), Florida Administrative Code, is waived for Edgewater Utilities, Inc., First Coast Utilities, Inc., Gumbo Limbo Enterprises, Hideaway Service, Inc., LTB Utility, Inc., Magnolia Manor Water Works, and Golden Bay Colonies Utility Company. It is further

ORDERED that the Comptroller's Office is requested to discontinue its efforts to collect the outstanding fine imposed against Golden Bay Colony Utility Company by the Commission in Order No. 21620, issued July 28, 1989. It is further

ORDERED that a fine of \$1,250 is assessed against Radice Corporation and a fine of \$1,250 is assessed jointly against A. P. Utilities, Inc., Aqua Pure Water Company, and Marico Properties, Inc., and if said fines are not paid after the exercise of the reasonable collection efforts described herein, we deem the fine to be uncollectible and authorize referral of these matters to the Comptroller's office for further disposition. It is further

ORDERED that after the exercise of the reasonable collection efforts and the referral described herein, Docket No. 890430-PU shall be closed. It is further

ORDERED that Docket No. 871206-PU shall be closed once Florida Cities' tax savings refund has been completed and verified.

ORDER NO. 23465
DOCKETS NOS. 871206-PU & 890430-PU
PAGE 7

By ORDER of the Florida Public Service Commission
this 11th day of SEPTEMBER, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MF

by: Kay Flynn
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.