

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a staff-) DOCKET NO. 920828-SU
assisted rate case by L.C.M.) ORDER NO. PSC-94-0261-FOF-SU
SEWER AUTHORITY in Lee County.) ISSUED: March 8, 1994
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

ORDER IMPOSING FINE

BY THE COMMISSION:

Background

LCM Sewer Authority (LCM or utility) is currently operated under the receivership of Mr. Hank Landis, the owner of Water Spectrum, Inc. By Order No. PSC-93-0633-FOF-SU, issued April 22, 1993, this Commission allowed LCM to implement emergency, temporary rates, subject to refund, provided, however, that the utility first acquire and produce one of the types of security set forth in the Order: a bond, a letter of credit, or an escrow account. Subsequently, we discovered that LCM had not established proper security, and in fact had begun collecting charges in June 1993 prior to the Commission's approval of any security or the revised tariff pages.

By Order No. PSC-93-1824-FOF-SU, issued December 23, 1993, we granted LCM's request for final increased rates and charges, but ordered LCM to show cause in writing why the utility should not be fined \$250 for charging unauthorized rates. On December 15, 1993, LCM filed an early response to the show cause portion of Order No. PSC-93-1824-FOF-SU. LCM did not request a Section 120.57, Florida Statutes hearing.

Imposition of Fine

As stated earlier, by Order No. PSC-93-1824-FOF-SU, the Commission ordered LCM to show cause why it should not be fined \$250 for charging unauthorized rates. A discussion of the facts

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which led to our decision to issue the Show Cause Order are as follows. In May 1993, the utility deposited \$4,000 into a refund account at an independent financial institution (State Employees Credit Union), and authorized that financial institution to deny withdrawal of those funds without the permission of the Commission. By the utility's own admission, the utility then began charging the emergency, temporary rates effective June 1, 1993.

By letter dated June 16, 1993, which included a sample escrow agreement, we notified the utility that the account established in May with the Credit Union did not provide any security for a refund in a manner that conformed with the provisions of Order No. PSC-93-0633-FOF-SU.

In the utility's response to the Show Cause Order, filed on December 15, 1993, LCM asserts the following: 1) because LCM's customers are given coupon booklets for payment which had to be printed and completed by June 1, 1993, LCM attempted to comply with the Commission's Order by that date; 2) a number of banks could not satisfy LCM's request by June 1, 1993, but the coupon books had already been mailed to customers; 3) the Credit Union agreed to open the account in May, 1993, with \$4,000 from Mr. Landis' money, but in June, this Commission notified Mr. Landis that the account was not acceptable; 4) in June 1993, Mr. Landis began discussions with Barnett Bank, who basically asserts that our Staff did not respond to the bank's calls and inquiries in a timely fashion; 5) the escrow account at Barnett had actually been opened August 4, 1993, but signed by the bank and Mr. Landis on November 1, 1993; and 6) Water Spectrum acknowledges that it did not have the refund account approved by the Commission before the rates were charged, but made a good faith effort to fully comply with our refund requirements.

We believe that the utility has failed to address the fundamental problem with this entire situation, which is that the utility began collecting rates, by its own admission, prior to our approval. Specifically, the utility admits that the payment coupon books were mailed and rates were collected prior to our approval of any security, and prior to the stamping of tariff sheets reflecting the emergency rates. This was a direct violation of Order No. PSC-93-0633-FOF-SU, and the utility has not adequately shown why such a direct violation took place.

Upon reviewing the utility's response and the correspondence sent to the utility, we believe that our Staff made repeated attempts to instruct and assist the utility regarding the technical requirements of providing proper security. However, it is our belief that no security for a refund had been properly provided,

and therefore, tariff sheets reflecting the emergency, temporary rates were never approved. Page 4 of Order No. PSC-93-0633-FOF-SU specifically states that:

These emergency temporary rates will be effective upon our staff's approval of both the security for refund and a copy of the proposed customer notice. The security should be in the form of a bond or letter of credit in the amount of \$3,973. Alternatively, the utility could establish an escrow agreement with an independent financial institution.

Pages 5 and 6 of Order No. PSC-93-0633-FOF-SU provide that:

If security is provided through an escrow agreement, the following conditions should be part of the agreement:

- 1) No refunds in the escrow account may be withdrawn by the utility without the express approval of the Commission.
- 2) The escrow account shall be an interest bearing account.
- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the utility.
- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Consentino v. Elson, 263 So.2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
- 8) The Director of Records and Reporting must be a signatory to the escrow agreement.

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Upon consideration, we find that the provisions found in Order No. PSC-93-0633-FOF-SU were sufficiently clear to the utility and should have prohibited the utility from collecting unauthorized rates. Therefore, we find it appropriate to fine LCM \$250 for its direct violation of Commission Order No. PSC-93-0633-FOF-SU. LCM shall have sixty days from the date of this Order to pay the fine.

If LCM fails to respond to reasonable collection efforts by Commission Staff, the collection of the fine shall be forwarded to the Comptroller's Office for further collection efforts. Reasonable collection efforts shall consist of two certified letters requesting payment. The referral to the Comptroller's office would be based on the conclusion that further collection efforts by this Commission would not be cost effective.

Pending the utility's completion of other requirements in Orders Nos. PSC-93-0633-FOF-SU and PSC-93-1824-FOF-SU, this docket shall remain open.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that LCM Sewer Authority is hereby fined \$250 for failing to comply with Order No. PSC-93-0633-FOF-SU to the extent set forth above. It is further

ORDERED that if reasonable collection efforts are unsuccessful, the collection of the fine shall be forwarded to the Comptroller's Office. It is further

ORDERED that this docket shall remain open pending LCM Sewer Authority's completion of the other requirements of Orders Nos. PSC-93-0633-FOF-SU and PSC-93-1824-FOF-SU.

By ORDER of the Florida Public Service Commission, this 8th day of March, 1994.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LAJ

by: Kay J. Lynn
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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.