

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause ) DOCKET NO. 951163-WU  
proceedings against The Peoples ) ORDER NO. PSC-96-0121-FOF-WU  
Water Service Company for ) ISSUED: January 23, 1996  
violation of Rule 25-30.145, )  
F.A.C., Audit Access to Records, )  
in Escambia County )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER TO SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

The Peoples Water Service Company (Peoples or utility) is a Class A utility providing water service to the public in Escambia County and elsewhere, and headquartered in Towson, Maryland. The Escambia County facility, the Warrington Plant, serves 8,008 residential customers, 1,893 commercial, government and irrigation customers and 30 fire systems in Pensacola, Florida. In Order No. PSC-95-0578-FOF-WU, issued May 9, 1995, we acknowledged Peoples' reorganization, through which the Warrington Plant, then a division of Peoples, became a wholly-owned subsidiary of Peoples, to be known as Peoples Water Service Company of Florida, Inc. In 1994, the utility reported total operating revenues of \$3,091,225.

On June 30, 1995, the Division of Water and Wastewater requested that the Division of Auditing and Financial Analysis (AFA) perform an audit of Peoples to investigate potential overearnings. By letter dated the same day, AFA informed the utility of the impending audit. On July 12, 1995, the staff auditor faxed a letter to the utility treasurer requesting the basic documentation that would be needed to complete the audit. Upon the utility's request, on July 25, 1995, staff met with counsel for the utility. Staff explained why it had decided to audit the utility, as well as the requirements of Rule 25-30.145, Florida Administrative Code, regarding audit access to records.

DOCUMENT NUMBER-DATE

00785 JAN 23 88

FPSC-RECORDS/REPORTING

The staff auditor began receiving some of the data on July 21, 1995. However, he had difficulty receiving timely and complete responses to most of the audit requests.

On September 12, 1995, AFA sent a letter to the utility documenting a phone conversation with the utility treasurer regarding the importance of timely responses and provided the utility with a copy of Rule 25-30.145, Florida Administrative Code. This letter confirmed that the utility had agreed to provide all document requests related to plant additions by September 18, 1995, and all remaining document requests by September 19, 1995. On September 19, 1995, the auditors visited the utility to review the responses and begin the final work on the audit. However, the responses produced were to a large extent incomplete. On September 22, 1995, AFA again wrote to the utility to express concern regarding the utility's continued violation of the Commission's access to records rule and to inform the utility that staff was preparing a recommendation to order the utility to show cause why it should not be fined for its continued noncompliance.

We issued Order No. PSC-95-1362-FOF-WU on November 2, 1995, requiring the utility to provide complete responses to all outstanding audit requests by October 13, 1995, or by October 20, 1995, without fail, if the utility, in good faith, was unable to meet the earlier date. The utility met the earlier date, filing responses to all outstanding audit requests and enabling the audit to be completed.

#### INITIATION OF SHOW CAUSE PROCEEDING

In Order No. PSC-95-1362-FOF-WU, we did not find it appropriate to, at that time, order Peoples to show cause why it should not be assessed a penalty for violation of Rule 25-30.145, Florida Administrative Code. We deferred our decision on that issue until a later time. Section 367.156, Florida Statutes, provides that the Commission shall have reasonable access to the utility's and its affiliated companies' records. Rule 25-30.145(1)(b), Florida Administrative Code, sets forth what is contemplated by "reasonable access," including the factors pertinent to establishing due dates. Rule 25-30.145(1)(c), Florida Administrative Code, sets forth the process to be invoked by the utility if it is unable to reach agreement with the auditor on what is a reasonable response time to the auditor's requests.

As we stated in Order No. PSC-95-1362-FOF-WU, it appeared that the utility had persistently delayed and withheld its responses to staff's audit requests in the absence of sufficient reason, thereby obstructing staff's efforts to conclude a proper audit of the

utility in a reasonable period of time. The order expressed our concern that if the utility is overearning, the utility's conduct potentially impacts its customers adversely, in that it threatens to extend the period of time during which the utility may be charging unjustifiable rates and collecting revenues that ought to be placed subject to refund. The utility did not invoke the process provided by rule through which it may resolve disagreements with the auditor in an orderly way.

It should be noted that in an earlier docket, we fined Peoples for violation of a Commission order. The utility became subject to Commission jurisdiction in 1992 when Escambia County relinquished its jurisdiction, pursuant to Section 367.171(1), Florida Statutes. In Order PSC-95-1129-FOF-WU, issued September 7, 1995, we fined the utility in the amount of \$200 for its willful violation of our order set forth in Order No. PSC-92-0866-FOF-WU, issued August 25, 1992, that required the utility to stop collecting gross-up on contributions in aid of construction (CIAC) until it should receive our authorization. In Order No. PSC-95-0478-FOF-WU, we denied the utility permanent gross-up authority and ordered the utility to refund to contributors all gross-up on CIAC collected in the period since the utility's certification, August 25, 1992.

By Section 367.161(1), Florida Statutes, we are authorized to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have willfully violated any provision of Chapter 367, Florida Statutes, or lawful rule or order of the Commission. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's conduct in issue here, would meet the standard for a "willful violation."

It is true that Peoples responded fully to staff's audit requests, having done so in compliance with Order No. PSC-95-1362-FOF-WU. Nonetheless, Peoples in numerous instances denied staff reasonable access to its records in the course of the present audit. The utility persisted in this conduct despite staff's several times calling the utility's attention directly to the provisions of Section 367.156, Florida Statutes, and Rule 25-30.145, Florida Administrative Code. We believe that this conduct has been "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that

the company had not intended to violate the rule, we nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule."

We find that the utility's violation of Section 367.156, Florida Statutes, and Rule 25-30.145, Florida Administrative Code, rises to the level warranting that a show cause order be issued. In voting, on first consideration, to defer our decision whether to order the utility to show cause why it should not be fined for this violation, we expressed our desire to take into account in our eventual consideration the utility's response to our present order, i.e., that the utility provide complete responses to all then-open audit requests by times certain. Furthermore, we stated that it was not appropriate to require the utility to address a show cause order while it was under our order to respond forthwith to staff's outstanding audit requests. The utility's compliance with that order, Order No. PSC-95-1362-FOF-WU, is laudatory, but, in our belief, not fully redemptory. The utility's conduct throughout much of the audit was obstructive without apparent justification.

Therefore, in consideration of the foregoing, we hereby order The Peoples Water Service Company to show cause in writing within 20 days of the issuance of this order why it should not be fined in the amount of \$500 for violation of Section 367.156, Florida Statutes, and Rule 25-30.145, Florida Administrative Code.

If the utility fails to respond to this show cause within twenty days of the issuance of this order, the penalty of \$500 shall be imposed without further action by this Commission. The failure of the utility to file a timely response to the show cause order shall both constitute an admission of the facts alleged and a waiver of right to a hearing.

If Peoples fails to respond to reasonable collection efforts by this Commission, we deem the fines to be uncollectible and hereby authorize referral of this matter to the Comptroller's Office for further collection efforts based on this Commission's finding that, under the aforesaid circumstances, further collection efforts would not be cost effective. Reasonable collection efforts shall consist of two certified letters requesting payment.

If, however, the utility responds to this show cause order by remitting the \$500 penalty, no further action will be required and this docket shall be closed administratively.

ORDER NO. PSC-96-0121-FOF-WU  
DOCKET NO. 951163-WU  
PAGE 5

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that The Peoples Water Service Company, 409 Washington Avenue, Suite 310, Towson, Maryland 212304-4971, shall show cause, in writing, within twenty days why it should not be fined \$500 for violation of Section 367.156, Florida Statutes, and Rule 25-30.145, Florida Administrative Code. It is further

ORDERED that The Peoples Water Service Company's written response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850, by the close of business on February 12, 1996. It is further

ORDERED that The Peoples Water Service Company's response must contain specific allegations of fact and law. It is further

ORDERED that The Peoples Water Service Company's opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission, as required under Rule 25-30.110(6)(c), Florida Administrative Code. It is further

ORDERED that a failure to file a timely response to this show cause order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that, in the event that The Peoples Water Service Company 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 a final determination on these matters is made. It is further

ORDERED that, if the utility fails to timely respond to the show cause, the penalty of \$500 shall be imposed without further action by this Commission. It is further

ORDERED that, if reasonable collection efforts are unsuccessful, the collection of the fines shall be forwarded to the Comptroller's office and the docket shall be closed. It is further

ORDERED that, if the utility responds to the show cause by remitting the penalty of \$500, this docket shall be closed administratively.

ORDER NO. PSC-96-0121-FOF-WU  
DOCKET NO. 951163-WU  
PAGE 6

By ORDER of the Florida Public Service Commission, this 23rd  
day of January, 1996.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )

CJP

Commissioners Susan F. Clark and Joe Garcia dissented.