

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of Show Cause ) DOCKET NO. 951163-WU  
Proceedings Against The Peoples ) ORDER NO. PSC-96-0590-FOF-WU  
Water Service Company for ) ISSUED: May 6, 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 DISPOSING OF SHOW CAUSE PROCEEDING

BY THE COMMISSION:

BACKGROUND

The Peoples Water Service Company (Peoples or utility) provides water service to the public in Escambia County and elsewhere, and is 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, 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 perform an audit of Peoples to investigate potential overearnings. The staff auditor encountered difficulties in obtaining utility responses to a number of audit requests, and on November 2, 1995, we issued Order No. PSC-95-1362-FOF-WU, 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. 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 Section 367.156, Florida Statutes, and Rule 25-30.145, Florida Administrative Code, deferring our decision on that issue until a later time. The utility met the earlier date, filing responses to all outstanding audit requests and enabling the audit to be completed.

DOCUMENT NUMBER-DATE

05079 MAY-6 96

FPSC-RECORDS/REPORTING

On January 23, 1996, we issued Order No. PSC-96-0121-FOF-WU, ordering Peoples to show cause why it should not be fined \$500 for violation of Section 367.156, Florida Statutes, and Rule 25-30.145, Florida Administrative Code. The utility filed its response to the show cause order on February 12, 1996. This order disposes of the show cause proceeding.

#### IMPOSITION OF PENALTY

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. In Order No. PSC-96-0121-FOF-WU, we found that, although the utility had complied with Order No. PSC-95-1362-FOF-WU, requiring it to respond to outstanding audit requests, the utility's conduct throughout much of the audit was obstructive without apparent justification.

In its response to the show cause order, the utility essentially contended that "the sheer volume of requests and copies demanded under these requests and the work occasioned upon the Utility as a result, rendered compliance with the strict requirements of the audit inquiries impossible for this or any other utility." Further, the utility contended that if it violated Rule 25-30.145(1)(a), Florida Administrative Code, the violation was technical and that "a fine of any sort is inappropriate under the circumstances."

Specifically, the utility alleged that:

- [1] staff wrongly characterized the staff auditor's letter of July 12, 1995, as providing notice of the audit breadth and nature;
- [2] this audit was abnormally burdensome in that voluminous documents were requested without a reasonable time for response;
- [3] the staff auditor's letter of September 12, 1995, misrepresented the utility treasurer's filing date commitment;
- [4] its substantial responsiveness to the audit requests has been overlooked, and that its failure to even more fully respond is ascribed to the unreasonable nature and demands of the inquiries;

- [5] staff was itself in violation of Rule 25-30.145(1)(b), Florida Administrative Code, and that, if Peoples violated Rule 25-30.145(1)(a), Florida Administrative Code, it was caused to do so primarily by staff's violation; and
- [6] it sought relief in compliance with Rule 25-30.145(1)(c), Florida Administrative Code, for those requests made without a reasonable response allowance.

Finally, Peoples disclaimed that it was in violation of either Section 367.156, Florida Statutes, or Rule 25-30.145, Florida Administrative Code. However, the utility did not request a hearing pursuant to Section 120.57, Florida Statutes, concluding that a hearing was not warranted by the amount of the proposed fine.

In its response, the utility characterized a "traditional" Commission audit, by way of distinguishing the present audit as a substantial departure. However, the utility's understanding of the Commission's current audit practice is not correct. That practice has been changed to make more effective and efficient use of both staff's and the utility's resources in auditing other than Class C utilities. One effect of the change in practice, as was seen in the present case, is that the staff auditors now make more requests for document production, but spend less time examining documents in the utility offices.

Further, Rule 25-30.110(b), Florida Administrative Code, requires utilities to maintain their records at their offices in Florida. On two occasions when Peoples assured our staff auditor that the required records were available in its Florida office, the auditor found that not to be the case. We find that this audit was conducted in the same manner as any other audit undertaken to investigate potential overearnings. Indeed, many of the audit requests were required when the information the utility provided could not be reconciled with the general ledger or annual reports.

It is not disputed that our staff made a large number of audit requests of the utility in a short period of time. On receiving the audit request letter of July 11, 1995, the utility asked that it be allowed until August 21, 1995 to prepare. On August 31, 1995, when our staff auditor first visited the utility's Pensacola office, the required documents were incompletely assembled and not well organized.

Neither is it disputed that the utility provided a large number of responses in the time allowed. However, no small number

of these responses were partial and, therefore, of limited value. Further, we find that the September 12, 1995, letter did not misrepresent the utility's commitment to provide certain documents by September 18, 1995. In fact, our staff auditors and the audit supervisor traveled to Pensacola thereafter on assurances that most of the documents would be available for their inspection at that time. On arrival, they discovered that most of the documents they anticipated to be available were not available or only partially available, and that Pensacola personnel were unable to provide the necessary help.

In Order No. PSC-95-1362-FOF-WU, we found that the utility had not properly sought relief according to the provisions of Rule 25-30.145(1)(c), Florida Administrative Code. Here, we find, with all of the circumstances considered, that the fact remains the utility too frequently obstructed our staff's access to its records in the conduct of the audit and consequently that it was in violation of Section 367.156, Florida Statutes, and Rule 25-30.145, Florida Administrative Code. Even if the audit requests were "burdensome" to the utility in its particular circumstances, we find, as we did before, that it failed to avail itself of the remedies provided by rule. The utility would, at most, characterize a violation in these circumstances, if one were to be found, a "technical" one. However, we find a willful violation.

Therefore, we find that Peoples has violated Section 367.156, Florida Statutes, and Rule 25-30.145, Florida Administrative Code; that Peoples has not in its response to the our show cause order shown why it should not be fined \$500 as a consequence; and that, accordingly, it is appropriate that Peoples be assessed a fine in the amount of \$500 for said violation. The fine shall be remitted to the Commission within 30 days of the issuance of this order, for transmittal to the Office of the Comptroller for deposit in the State General Revenue Fund, pursuant to Section 367.161, Florida Statutes.

The collection of the fine shall be referred to the Office of the Comptroller for further collection efforts if Peoples fails to respond to reasonable collection efforts. We define reasonable collection efforts to be two certified letters demanding payment. If reasonable collection efforts fail, the fine shall be deemed uncollectible. The referral to the Office of the Comptroller shall be based on a finding that further collection efforts by this Commission would not be cost effective. Any collection as a result of the action of the Office of the Comptroller shall be deposited in the State General Revenue Fund pursuant to Section 367.161, Florida Statutes.

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If the utility makes timely payment of the fine, or if it fails to make payment upon reasonable collection efforts and the matter is referred to the Office of the Comptroller, this docket shall be closed administratively, since no further issues will remain to be resolved.

Based on the foregoing, it is

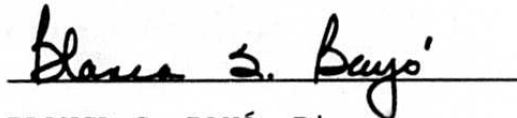
ORDERED by the Florida Public Service Commission that a fine in the amount of \$500 shall be assessed The Peoples Water Service Company for violation of Section 367.156, Florida Statutes, and Rule 25-30.145, Florida Administrative Code. It is further

ORDERED that the fine shall be remitted to the Commission within 30 days of the issuance of this order, for transmittal to the Office of the Comptroller for deposit in the State General Revenue Fund, pursuant to Section 367.161, Florida Statutes. It is further

ORDERED that the collection of the fine shall be referred to the Office of the Comptroller for further collection efforts if Peoples fails to respond to reasonable collection efforts. It is further

ORDERED that if the utility makes timely payment of the fine, or if it fails to make payment upon reasonable collection efforts and the matter is referred to the Office of the Comptroller, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission, this 6th day of May, 1996.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

CJP

Dissents:

Chairman Susan F. Clark dissented.

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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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater 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.