

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Disposition of delinquent regulatory assessment fees and penalties for General Development Utilities, Inc., a company no longer subject to Florida Public Service Commission jurisdiction.

DOCKET NO. 040078-WS
ORDER NO. PSC-04-0179-FOF-WS
ISSUED: February 20, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

General Development Utilities, Inc. (GDU) failed to remit its regulatory assessment fees (RAFs), plus penalties and interest for January 1, 1996 through February 28 1996, as required by Order No. PSC-96-0746-FOF-WS, issued June 6, 1996, in Docket No. 960218-WS, In Re: Application for approval of sale of General Development Utilities, Inc. (Port Labelle Division) to Hendry County and cancellation of Certificate Nos. 526-W and 460-S in Glades and Hendry Counties. In 1996, GDU sold its water and wastewater facilities in Glades and Hendry Counties to Hendry County. Order No. PSC-96-0746-FOF-WS acknowledged the sale, effective February 29, 1996, and also ordered GDU to remain responsible for all outstanding RAFs for the period of January 1, 1996 through the date of the transfer. However, the RAFs were never paid, and GDU has since been dissolved. We have exercised reasonable efforts to collect the outstanding RAFs. GDU is still registered as a corporation through the Florida Department of State and has several addresses listed. Our staff sent certified letters to all the officers listed, but did not receive any response. Because numerous attempts to collect the unpaid RAFs have been unsuccessful, and because the utility no longer exists, it is appropriate for us to refer the utility's unpaid RAFs and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible.

Pursuant to Rule 25-30.120(2), Florida Administrative Code, RAFs must be paid by March 31 of each year. Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs. In addition, pursuant to Sections 367.145(1)(b) and 367.161, Florida Statutes, and Rule 25-30.120(7)(b), Florida Administrative

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Code, the Commission may impose an additional penalty upon a utility for failure to pay RAFs in a timely manner.

Although GDU has been dissolved, we maintain jurisdiction to pursue collection efforts for the failure to timely pay RAFs pursuant to Sections 367.071(2), 367.145 and 367.161, Florida Statutes.

In establishing rates, we include in our determination of the revenue requirements the utility's obligation to pay RAFs. However, as noted above, GDU failed to pay RAFs for the period of time indicated. Although GDU has been dissolved, it remains responsible for those fees pursuant to Section 367.071(2), Florida Statutes.

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. 5% of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25%.
2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% per annum.

As noted above, pursuant to Order No. PSC-96-0746-FOF-WS, we approved the transfer of GDU to Hendry County. However, that Order determined that GDU would remain responsible for all outstanding RAFs through the date of the transfer.

Our calculation of the RAFs, plus penalty and interest for the periods indicated above is set out below. As of February 29, 2004, the amounts due would be as follows:

<u>RAF</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$5,577.82	\$1,394.46	\$4,629.59	\$11,601.87

Regulatory assessment fees are intended to cover the costs incurred by this Commission in the regulation of utilities. Despite GDU having been found by this Commission to be responsible for the RAFs for the period of time indicated, it has not paid the RAFs which are now past due.

Utilities are charged with the 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 utilities' failure to pay RAFs, plus applicable penalties and interest, would meet the standard for a "willful violation." In Order No. 24306,

ORDER NO. PSC-04-0179-FOF-WS
DOCKET NO. 040078-WS
PAGE 3

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., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "willful" implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. The utility's failure to pay RAFs rises to a level that would ordinarily warrant a show cause proceeding. However, after the transfer of the utility to Hendry County, GDU has since been dissolved.

Based on the foregoing, we find that a show cause proceeding and further collection efforts are not warranted. Any further attempts to collect would be futile because, in this instance, the utility has been dissolved.

Therefore, show cause proceedings shall not be initiated against GDU for failure to pay RAFs. This matter shall be referred to the Department of Financial Services, for permission to write off these accounts as uncollectible.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the delinquent regulatory assessment fees and associated penalties and interest set forth in the body of this Order shall be referred to the Department of Financial Services, for permission to write off the accounts as uncollectible. It is further

ORDERED that we shall decline to order General Development Utilities, Inc. to show cause, in writing within 21 days, why it should not be fined for its failure to timely pay regulatory assessment fees. It is further

ORDERED that this docket is hereby closed.

ORDER NO. PSC-04-0179-FOF-WS
DOCKET NO. 040078-WS
PAGE 4

By ORDER of the Florida Public Service Commission this 20th day of February, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
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 120.569(1), 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 the Commission Clerk and Administrative Services, 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

ORDER NO. PSC-04-0179-FOF-WS
DOCKET NO. 040078-WS
PAGE 5

the Director, Division of the Commission Clerk and Administrative Services 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.