

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) ORDER NO. 21185-A
to comply with the provisions of Rule) ISSUED: 5-25-89
25-14.003(4), F. A. C.)
GUMBO LIMBO ENTERPRISES)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

AMENDATORY ORDER TO SHOW CAUSE

BY THE COMMISSION:

Order No. 21185 was mailed to Gumbo Limbo Enterprises (Gumbo Limbo) at its address of record. The order was returned by the postal service. Pursuant to a petition by Lee County, the circuit court, on September 1, 1988, appointed John H. Newberry as receiver for Gumbo Limbo. This amendatory order is issued to provide Mr. Newberry, as receiver for Gumbo Limbo, with notice and a new time limit for a written response to show cause.

Rule 25-14.003(4), Florida Administrative Code, provides that on or before March 1st of every year following a tax rate change, utilities shall furnish a final tax report. By Order No. 20852, issued March 3, 1989, we gave Commission staff authority to administratively grant a sixty-day extension of the filing deadline upon written request received no later than the March 1 filing date.

Staff mailed Gumbo Limbo a copy of the required report on January 19, 1989. The postal service was unable to deliver the report due to the outdated address. Gumbo Limbo failed to file its report or request an extension by the March 1 deadline.

Section 367.161(2), Florida Statutes (1987), provides that the Commission has the power to impose a fine of up to \$5,000 a day for willful violation of any Commission rule or order. Since utilities subject to Commission jurisdiction are charged with knowledge of Commission rules, Gumbo Limbo is subject to penalty for failure to comply with Rule 25-14.003(4), Florida Administrative Code.

The fact that Gumbo Limbo was not mailed a report form does not relieve it of its obligation to comply with the rule, particularly in light of the utility's violation of another Commission rule. Rule 25-22.005(7), Florida Administrative

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Code, requires that utilities file a notice of change of address in writing with our Division of Records and Reporting.

We believe that an appropriate guideline to use in determining the level of the fine for failure to timely file the tax report is the fine schedule set forth in Rule 25-30.110(7)(b), Florida Administrative Code, for failure to timely file annual reports. The penalties are based on a classification system related to annual revenues as follows:

\$25.00 per day for Class A utilities;
\$13.50 per day for Class B utilities;
\$ 3.00 per day for Class C utilities.

Based on the foregoing, we find it appropriate to require Gumbo Limbo, a Class C utility, to show cause in writing why it should not be fined \$3.00 for each day that elapses from March 1, 1989, until the date its tax report is properly filed.

It is, therefore,

ORDERED by the Florida Public Service Commission that Gumbo Limbo Enterprises shall show cause, in writing, why it should not be fined \$3.00 for each day that elapses from March 1, 1989, until the date its tax report is properly filed, for failure to comply with Rule 25-14.003(4), Florida Administrative Code. It is further

ORDERED that Gumbo Limbo Enterprises' written response shall be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 14, 1989. It is further

ORDERED that Gumbo Limbo Enterprises' response must contain specific allegations of fact and law. It is further

ORDERED that Gumbo Limbo Enterprises' opportunity to file a written response shall constitute its opportunity to be heard prior to a final determination of noncompliance or assessment of penalty. It is further

ORDERED that a failure to file a timely written 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 Gumbo Limbo Enterprises files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57(1), Florida Statutes (1987), further proceedings may be scheduled before a final determination on these matters is made.

By ORDER of the Florida Public Service Commission,
this 25th day of MAY, 1989.


STEVE TRIBBLE, Director
Division of Records and Reporting

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