

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show cause proceedings against)	DOCKET NO. 880925-WU
SUNNYLAND UTILITIES, INC., for failure)	ORDER NO. 21339
to comply with 1986 annual report)	ISSUED: 6-6-89
requirements)	
_____)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 BETTY EASLEY
 JOHN T. HERNDON
 GERALD GUNTER
 THOMAS BEARD

ORDER REFERRING FINES

BY THE COMMISSION:

Commission Order No. 20459, issued December 15, 1988, imposed a penalty against Sunnyland Utilities, Inc., ("Sunnyland" or "utility"), for failure to file its 1986 annual report. The fine is to accrue at the rate of \$3 per day until the annual report is filed until a total penalty of \$2,500 has accrued.

By letter of February 2, 1989, Commission staff notified Sunnyland that the time for appeal of Order No. 20459 had lapsed and staff intended to recommend court enforcement proceedings to collect the fine. On March 6, 1989, Commission staff sent a certified letter to the registered agent for Sunnyland advising that the matter would be subject to formal collection proceedings absent payment of the fine and receipt of the 1986 annual report.

On March 17, 1989, Commission staff received a letter from Gregory Spatz, president of Sunnyland. The letter states that the Commission's claim represented a contingent liability that was discharged by the bankruptcy proceedings. The letter further states that "continued harassment and collection activities may result in a contempt motion being filed in Federal Court."

Since September, 1987, the utility has been operated by the South Brevard Water Co-op, Inc., ("Co-op"), a nonprofit corporation made up of utility customers. In April, 1988, the Co-op secured title to the utility facilities and land at a foreclosure sale. On September 6, 1988, the Commission issued Order No. 19936, indicating that the Co-op is exempt from Commission regulation pursuant to the exemption for non-profit corporations set forth in Section 367.022(7), Florida Statutes.

REFERRAL

The Spatz letter received on March 17, 1989 contains no citations to applicable provisions of Federal Bankruptcy law,

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or attachments of applicable orders of the Bankruptcy court. Section 523.(a)(7) of the Bankruptcy Code provides that debts "for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, (that is) not compensation for an actual pecuniary loss, other than a tax penalty" are not discharged. Therefore, even assuming the accuracy of Mr. Spatz's statement that the bankruptcy proceeding discharged all contingent liabilities, collection of the subject fine may still be pursued.

The Commission has made reasonable efforts to communicate with the utility and collect the fine. Further efforts by this Commission to collect the fine would not be cost effective. Therefore, we find it appropriate to refer this matter to the Comptroller's Office to either pursue collection or give this Commission permission to write off the outstanding fines as uncollectable. As no further action is required, we find it appropriate to close this docket.

WHEREFORE, in consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the fines imposed pursuant to Commission Order No. 20459 shall be referred to the Comptroller's Office to either pursue collection or give this Commission permission to write off the outstanding fines as uncollectible. It is further

ORDERED that, after expiration of the time in which to file a motion for reconsideration or notice of appeal, Docket No. 880925-WU shall be closed.

By Order of the Florida Public Service Commission
this 6th day of JUNE, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DAS

by: Kay Hizon
Chief, Bureau of Records

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.

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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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.