

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Show Cause Proceedings against) | DOCKET NO. 890675-WS |
| BEACON TWENTY-ONE DEVELOPMENT CORP., in) | ORDER NO. 22064 |
| Martin County for failure to comply) | ISSUED 10-17-89 |
| with 1987 annual report requirements) | |
| _____) | |

The following Commissioners participated in the disposition of this matter:

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

ORDER IMPOSING AND REFERRING FINE

BY THE COMMISSION:

IMPOSITION

By Order No. 21446, as amended by Order No. 21446-A, we directed Beacon Twenty-One Development Corp., ("Beacon" or "utility"), to show cause why it should not be fined at least \$3 per day for each day that its 1987 annual report is delinquent, to a total of \$2,500, pursuant to Rule 25-30.110, Florida Administrative Code, for failure to file its 1987 annual report. These orders provide that a failure to file a timely written response would constitute an admission of the facts alleged and a waiver of any right to a hearing. The utility did not file a response and the time for filing same has lapsed, nor has it filed its 1987 annual report.

We find that the utility, by its failure to file any response to the above referenced orders, has admitted the facts alleged therein. We further find that the utility has not filed a 1987 annual report. There is no reason known to us why fines should not be imposed upon the utility and calculated according to the Rule formula as directed in said orders. Therefore, we find it appropriate to fine the utility and that fine should continue to accrue at the rate of \$3 per day until the utility files its 1987 annual report or until a maximum fine of \$2,500 is reached.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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As stated in the show cause order, Beacon or its principals held title to the utility assets as of December 31, 1987. Rule 25-30.110, Florida Administrative Code requires utilities subject to the Commission's jurisdiction as of December 31st of each year to file an annual report. On July 22, 1988 the utility property was sold to Mr. and Mrs. Burge. The property was subsequently transferred to Laniger Enterprises, Inc. ("Laniger"). The transfer to Laniger is the subject of Docket No. 881500-WS. Laniger is currently operating the utility. On August 21, 1989, Laniger Enterprises, Inc., filed a timely response to the show cause order.

Laniger requests that no fine be imposed against Laniger, or, in the alternative, that a hearing be conducted. Laniger's response states that Laniger has not received records that would enable it to prepare the report and further states Laniger's belief that said records were destroyed or stolen. Laniger further notes that it has been working with this Commission and the Department of Environmental Regulation to bring the utility into compliance. Laniger did not have title to utility assets on December 31, 1987. Therefore, Laniger is not the entity responsible for submittal of the 1987 annual report pursuant to Rule 25-30.110, Florida Administrative Code and no fine should be imposed against Laniger for failure to timely file Beacon's 1987 annual report.

REFERRAL

Copies of the show cause orders sent to Beacon at its official address of record with this Commission and the address of Beacon's registered agent were returned unclaimed. Rule 25-30.005(5), Florida Administrative Code, provides that:

Except in a docket where a company representative has previously provided an alternative address, the Commission is obliged only to transmit its orders, notices, and other documents (such as...annual report forms) to the official address.

The show cause orders directed referral of collection of fines assessed against Beacon for failure to file its 1987 annual report to the Comptroller's Officer in the event that Beacon did not respond to reasonable collection efforts. The

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orders further provided that two certified letters requesting payment would be considered reasonable collection efforts. Because copies of the Order sent to Beacon at the address of its registered agent and its official address of record with the Commission were returned unclaimed, it would be futile to send letters requesting payment. Therefore, we find that further collection efforts by this Commission would not be cost effective and direct that the fine be referred to the Comptroller's office as uncollectable. Upon such referral, this docket should be closed.

WHEREFORE, in consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Beacon Twenty-One Development Corp., is hereby assessed a fine for failure to file its 1987 annual report, which fine shall continue to accrue at the rate of \$3 per day until the utility files its annual report or until a total fine of \$2,500 has accrued. It is further

ORDERED that the fine hereby imposed is assessed against Beacon Twenty-One Development Corp. and its principles who were owners as of December 31, 1987 and not against Laniger Enterprises, Inc. It is further

ORDERED that the fine hereby imposed is deemed uncollectable and referral to the Comptroller's office for further disposition is hereby authorized. It is further

ORDERED that this docket shall be closed after the aforesaid referral to the Comptroller's Office.

By ORDER of the Florida Public Service Commission
this 17th day of OCTOBER, 1989.

STEVE TRIBBLE, Director
Division of Records & Reporting

(S E A L)

DAS (4780L)

by: 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 120.59(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 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.