

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of Sunnyland ) DOCKET NO. 860149-WU  
Utilities, Inc., for Rate ) ORDER NO. PSC-96-1354-FOF-WU  
Increase in Brevard County ) ISSUED: November 18, 1996  
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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 CONCERNING ENFORCEMENT OF ORDER NO. 20127  
AND  
CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Sunnyland Utilities, Inc. (Sunnyland or the utility), filed a rate case on April 16, 1986. By Order No. 16306, issued July 3, 1986, we authorized the utility to charge interim rates subject to refund. The interim rates represented an increase of 166.78%, and were designed to generate annual revenues of \$68,582. The potential refund was to be secured by the utility's corporate undertaking in the amount of \$30,000, guaranteed personally by Dennis Stewart, the utility's president. Our order required the corporate undertaking be "guaranteed by either or both Dennis Stewart or Gregory Spatz." While Mr. Stewart did, Mr. Spatz, another of the utility's owners, never obligated himself to do this. By Order No. 16832, issued November 19, 1986, we proposed to set rates designed to generate annual revenues of \$82,672, compared with test year revenues of \$25,707. Upon the protest of the Office of Public Counsel, in Order No. 17402, issued April 14, 1987, we authorized the utility to charge the proposed agency action rates. Because the utility had already collected revenues subject to refund amounting to the corporate undertaking of \$30,000 and appeared no longer able to support a corporate undertaking or to secure credit, we ordered the utility to place all revenues collected subject to refund, 68.9% of total revenues, in an escrow account. On March 18, 1987, the utility filed in U.S. Bankruptcy Court, Middle District of Florida, a Petition for Relief under Chapter 11 of Title 11, U.S.C.

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The utility complied partially with the escrow requirement, placing \$13,246.96 in an escrow account. The South Broward Water Co-op, Inc., assumed operational responsibility for the utility in September 1987 and on September 6, 1988, in Order No. 19936, we found the co-operative exempt from our regulation pursuant to Section 367.022(7), Florida Statutes. By Order No. 18166, issued September 18, 1987, we then released \$12,246 from the escrow fund to the co-operative for plant repairs. On October 6, 1988, we issued Order No. 20217, consummating Order No. 19924, issued September 6, 1988, in which we noticed our intention to dismiss the rate case and order a refund, finding Sunnyland to not have complied with several of our orders and to no longer own and operate the utility. In Order No. 20217, we ordered Sunnyland to refund to its customers within 90 days all revenues collected in excess of original rates, excluding those placed in escrow, and required Mr. Stewart, pursuant to his personal guaranty, to make up any amount of the refund not made by the utility in that period of time, up to the amount of \$30,000. Sunnyland collected excess revenues in the approximate amount of \$53,000 from July 1986 to July 1987. Thus its refund liability, without interest, was approximately \$40,000. Neither Sunnyland nor Mr. Stewart made the required refunds.

On June 23, 1989, we filed a Complaint and Petition for Enforcement in Circuit Court, Eighteenth Judicial Circuit, Brevard County, Case No. 89-09994-CA, demanding judgment against Mr. Stewart directing specific performance of the refund in the amount of \$30,000, together with interest. However, the action was dismissed on March 16, 1992, for failure to prosecute.

Sunnyland converted its petition to one for relief under Chapter 7, Title 11, U.S.C., and on April 29, 1988, the bankruptcy court issued orders allowing administrative expenses, payment of priority claims, and payment of first dividends.

On January 18, 1991, Mr. Stewart petitioned the U.S. Bankruptcy Court, Southern District of Florida, for relief under Chapter 7, Title 11, U.S.C. On April 29, 1991, we filed with the bankruptcy court a Complaint and Proof of Claim in the amount of \$30,000, as a priority claim accrued October 6, 1988. The court, on June 26, 1991, issued an Agreed Order to Dismiss Complaint. On June 19, 1991, the court handed down a Final Decree, ordering Mr. Stewart's estate fully administered, the trustee discharged and the case closed, without, however, redressing the Commission's claim.

ENFORCEMENT OF ORDER NO. 20127

Pursuant to Order No. 16306, Sunnyland, by its corporate undertaking in the amount of \$30,000, and Dennis Stewart, by his personal guaranty of the corporate undertaking, were to be held jointly and severally liable for refunds to the utility's customers. As already noted, we later ordered the utility to make refunds of revenues collected pursuant to interim and proposed agency action rates for the period July 1986 to July 1987. First, as for Sunnyland, although corporate debt survives proceedings under Chapter 7, Title 11, U.S.C., we note that it is a dissolved Florida corporation. Shareholders of dissolved corporations, in some circumstances, remain liable to claimants of the dissolved corporation to the extent of any amount distributed in dissolution. Sunnyland was adjudged bankrupt pursuant to Chapter 7, and its debts discharged to the extent of about 12%. Thus, we conclude no distribution to shareholders occurred. Therefore, we find it appropriate to no longer pursue efforts to enforce Order No. 20127 as to Sunnyland or its shareholders.

Second, as for Dennis Stewart, also under a Chapter 7, Title 11, U.S.C., proceeding, we note that his estate was adjudged fully administered by the bankruptcy court. His obligation as guarantor of Sunnyland's corporate undertaking is not an obligation of the kind that is nondischargeable under Section 523(a)(7) of the bankruptcy code. Thus, it appears that Mr. Stewart's liability has been extinguished. In any event, we recall that our enforcement efforts against Mr. Stewart in circuit court in 1989 and in bankruptcy court in 1991 failed when we could not establish standing. Therefore, we also find it appropriate to no longer pursue efforts to enforce Order No. 20127 as to Mr. Stewart.

As for Gregory Spatz, although we ordered that he, as well as Mr. Stewart, guarantee Sunnyland's corporate undertaking in Order No. 16306, as noted above, Mr. Spatz, unlike Mr. Stewart, never executed a personal guaranty. Our intention was to require the personal guaranty of one or the other as a minimum condition, while inviting the guaranties of both of them. In Order No. 20127, we ordered Mr. Stewart, but not Mr. Spatz, to make any portion of the required refund not made by Sunnyland within 90 days pursuant to his personal guaranty.

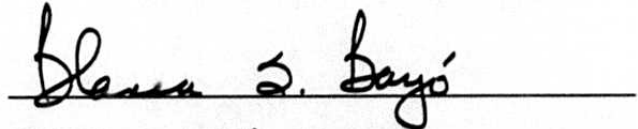
Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that it will no longer pursue efforts to enforce Order No. 20127. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 18th  
day of November, 1996.

A handwritten signature in black ink, reading "Blanca S. Bayó", is written over a solid horizontal line.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

CJP

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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.