

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Gem Estates Utilities, Inc., in Pasco County for violation of Rule 25-30.110(3), F.A.C., Annual Report, and Rule 25-30.120, F.A.C., Regulatory Assessment Fees.

DOCKET NO. 980678-WU
ORDER NO. PSC-99-0265-FOF-WU
ISSUED: February 10, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER MODIFYING ORDER NO. PSC-98-0905-SC-WU, REQUIRING THAT LIENS BE RECORDED FOR DELINQUENT REGULATORY ASSESSMENT FEES, PENALTIES AND INTEREST, AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Gem Estates Utilities, Inc. (Gem Estates or utility), is a Class C water utility operating in Pasco County. Gem Estates provides water service to 215 customers in a mobile home subdivision in Pasco County. In its 1994 annual report, the utility reported water operating revenues of \$12,152 and operating expenses of \$19,887, resulting in a net loss of \$7,735.

This utility has neither filed its annual reports from 1995 to 1997 nor remitted regulatory assessment fees for the same period. The utility also owes penalties and interest for 1992 and 1993 for not timely remitting regulatory assessment fees.

By Order No. PSC-98-0905-SC-WU, issued July 7, 1998, we ordered that Gem Estates show cause, in writing, within 20 days of the order, why it should not remit a penalty in the amount of

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\$3,888 (\$2,331 for 777 days x \$3.00 per day for 1995; \$1,326 for 442 days x \$3.00 for 1996; \$231 for 77 days x \$3.00 for 1997) for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its annual reports from 1995 to 1997 and \$399.28 (\$139.50 for 1995; \$142.97 for 1996; \$116.81 for 1997) and interest in the amount of \$271.10 (\$156.24 for 1995; \$91.50 for 1996; \$23.36 for 1997) for violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, for failure to remit regulatory assessment fees. The utility was also ordered to show cause, in writing, within 20 days of the order, why it should not remit a statutory penalty and interest of \$12.38 for failure to timely remit 1992 and 1993 regulatory assessment fees. Further, Gem Estates was ordered to immediately remit \$1,713.96 (\$558 for 1995, \$571.89 for 1996; and \$584.07 for 1997) in regulatory assessment fees. Gem Estates failed to file a response to the show cause order; thus, the penalties were deemed assessed. We determined that if Gem Estates failed to respond to reasonable collection efforts, the collection of penalties would be referred to the Department of Banking and Finance Office of the Comptroller (Comptroller's Office) for further collection efforts.

We sent two collection letters on August 26, 1998 and September 9, 1998. Pursuant to our Order, our staff began to prepare to transfer this matter to the Comptroller's Office for further collection efforts.

Recently, we prepared to visit the utility to investigate a complaint regarding a disruption in water service and general customer dissatisfaction. We then learned that the Florida Department of Environmental Protection (DEP) has been investigating complaints by customers of the utility for the past two years. According to DEP staff, Gem Estates' electric utilities have been disconnected on three occasions, with the most recent disconnection occurring during the week of December 21, 1998. The Gem Estates Homeowner's Association (Homeowner's Association) has paid the utility's electric bill on the last two occasions in order to continue to receive water service.

Ms. Jacqueline Cahill, president of Gem Estates, has consistently refused certified Commission correspondence (letters dated April 9, 1996, July 26, 1996, July 28, 1997, November 26, 1997, January 5, 1998, May 12, 1998, August 26, 1998 and September 9, 1998). We attempted to send correspondence to Ms. Cahill by first class mail and never received a reply. According to DEP staff, Ms. Cahill never responded to Pasco County Department of

Health correspondence. Ms. Cahill stopped communicating with the utility operator, Suncoast, Inc., and has recently refused to pay the operator as well. Ms. Cahill has not responded to DEP's correspondence, nor DEP's attempts to serve her with process for outstanding notices of violation (NOV). DEP was successful with service of process on the last NOV due to the recent disruption of service and filed a petition for an emergency injunction against Ms. Cahill's operation of the utility in circuit court on January 5, 1999. As a part of DEP's prayer for relief, DEP moved the court to find a constructive abandonment of the utility by Ms. Cahill and appoint the Homeowners Association as receiver or order a forced sale of the utility.

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As stated previously, Jacqueline Cahill, president of the utility, failed to respond to numerous attempts to communicate with her regarding the delinquent annual reports for 1995 to 1997, delinquent regulatory assessment fees, penalties and interest for those same years, as well as penalty and interest for failure to timely remit 1992 and 1993 regulatory assessment fees. Because Ms. Cahill failed to respond to Order No. PSC-98-0905-SC-WU, the penalties were deemed assessed. By that same order, we determined that if Ms. Cahill did not respond to reasonable collection efforts, then this matter would be forwarded to the Comptroller's Office for further collection efforts.

During this same time, DEP issued three NOVs for failing to maintain electricity to operate the utility. According to DEP staff, Ms. Cahill has all but abandoned the operations of the utility, with the utility operator managing the utility without being compensated and the Homeowners Association remitting the last two payments for the utility's electricity bills. DEP then issued its final NOV for the latest disruption of service and for failing to respond to previous NOVs and successfully served Ms. Cahill. DEP moved for an emergency injunction, officially blocking Ms. Cahill from operating the utility and moved that the Circuit Court of Pasco County find a constructive abandonment of the utility by Ms. Cahill and order a forced sale of the system. That hearing is pending.

We believe that no amount of communication from the Commission or other entities will force Ms. Cahill into compliance. Therefore, we modify Order No. PSC-98-0905-SC-WU so that pursuant to Section 367.161, Florida Statutes, the penalty for delinquent

annual reports and regulatory assessment fees set forth in that Order, will be a lien on the real and personal property of the utility, enforceable by the Commission as a statutory lien under Chapter 85, Florida Statutes. The proceeds of such lien shall be deposited by the Commission in the General Revenue Fund Unallocated Account.

Further, we modify Order No. PSC-98-0905-SC-WU, so that delinquent regulatory assessment fees will be recorded as a lien on the real and personal property of the utility and its directors, and shall be enforceable as a lien upon being duly recorded with the Clerk of the County Court in Pasco County pursuant to Section 55.10, Florida Statutes. We shall provide notice to the utility and its directors of such lien pursuant to Section 55.10, Florida Statutes. We shall pursue collection efforts as appropriate pursuant to Section 69.041, Florida Statutes. The proceeds of such lien shall be deposited in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. The total amount of the liens is \$6,284.72.

This Order is consistent with Order No. PSC-98-1005-SC-WU, issued July 24, 1998, in Docket No. 980729-WU, Initiation of show cause proceedings against A. P. Utilities, Inc., for violation of Rule 25-30.110, F.A.C. Annual Reports, and Rule 25-30.120, F.A.C., Regulatory Assessment Fees. Once the liens have been filed and recorded this docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the penalties and interest set forth in this Order shall be a lien on the real and personal property of Gem Estates Utilities, Inc., and its directors, Jacqueline Cahill, P.O. Box 1325, Zephyrhills, Florida, 33539-1325, and shall be enforceable by the Commission as a statutory lien under Chapter 85, Florida Statutes. It is further

ORDERED that any payment of penalties shall be deposited in the State General Revenue Fund.

ORDERED that pursuant to Section 55.10, Florida Statutes, this Order shall be recorded as a lien on the real and personal property of Gem Estates Utilities, Inc., and its directors, Jacqueline Cahill, for the amount of the utility's delinquent regulatory assessment fees, and shall be enforceable by the Commission as a

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lien upon being duly recorded with the Clerk of the County Court in Pasco County, Florida. It is further

ORDERED that any payment or collection of regulatory assessment fees shall be deposited in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. It is further

ORDERED that upon filing this Order with the Clerk of the County Court of Pasco County and recording the liens, Docket No. 980678-WU shall be closed administratively.

By ORDER of the Florida Public Service Commission this 10th day of February, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CF/JSB

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

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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.