



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: SEPTEMBER 23, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (FORDHAM) 2-27.
DIVISION OF TELECOMMUNICATIONS (JOHNSON) JEF

RE: DOCKET NO. 990995-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST MAY SYSTEMS, INC. FOR APPARENT VIOLATION OF RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES

AGENDA: 10/5/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\990995.RCM

RECEIVED-PSC
23 SEP 21 AM 10:00
RECORDS AND REPORTING

CASE BACKGROUND

- April 21, 1999 - PAA Order PSC-99-0782-FOF-TI was issued granting May Systems, Inc. certificate number 6086.
- May 21, 1999 - Order PSC-99-1023-CO-TI was issued consummating Order PSC-99-0782-FOF-TI.
- May 26, 1999 - Staff sent a certified letter to the address listed in the Master Commission Directory requesting a response by June 11, 1999, to a consumer complaint that had been received by the Bureau of Service Evaluation.
- June 15, 1999 - After a certified letter was returned by the U.S. Postal Service, staff called Mr. Yektayi to inquire why there was no response to staff inquiries. Mr. Yektayi informed staff that he was unaware of the letter.
- June 16, 1999 - Staff faxed May Systems, Inc. a copy of the original certified letter that was returned to the PSC, to ensure the company had a copy of the correspondence.

DOCUMENT NUMBER-DATE

11306 SEP 21 99

PSC-RECORDS/REPORTING

DISCUSSION OF ISSUES

ISSUE 1: Should May Systems, Inc. (May Systems) be ordered to show cause why a fine of \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, should not be imposed or certificate number 6086 be canceled?

RECOMMENDATION: Yes. The Commission should order May Systems to show cause in writing, within 21 days of the date of the order, why it should not be fined \$10,000 or have certificate number 6086 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code. May Systems' response must contain specific allegations of fact or law. If May Systems fails to respond to the show cause, certificate number 6086 should be involuntarily canceled. (Johnson)

STAFF ANALYSIS: May 26, 1999, staff sent a certified letter to the address listed in the Master Commission Directory to May Systems, informing them of a complaint filed with the Florida Public Service Commission. On June 2, 1999, the U.S. Postal Service returned the certified correspondence, which was unclaimed by the company. On June 15, 1999, staff called Mr. Yektayi, May Systems' owner and Commission liaison, to inquire why he failed to respond. Mr. Yektayi informed staff that he was not aware of the correspondence, but his attorney may have received it. Mr. Yektayi, at that time, informed staff that May Systems was out of business, and staff informed him of the procedures for voluntary cancellation of his certificate. Staff also faxed May Systems a copy of the original certified letter, to ensure that the company had the information. Staff gave May Systems until the close of business, June 16, 1999, to submit a response. To date, May Systems has not responded to staff inquiries.

In addition, certificated companies must pay a minimum annual regulatory assessment fee (RAF) of \$50 if the certificate was active during any portion of the calendar year. Payment for 1999 RAFs will be due 01/31/00. Neither the cancellation of its certificate nor the failure to receive the RAF notice for 1999 shall relieve the company from its obligation to pay RAFs for 1999.

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law'

DOCKET NO. 990995-TI
DATE: September 23, 1999

will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Staff believes that May Systems' conduct in not responding to Commission staff inquiries, in apparent violation of Commission Rule 25-4.043, Florida Administrative Code, has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as May System's conduct at issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission find that May Systems' apparent violation of Rule 25-4.043, Florida Administrative Code, warrants issuance of a show cause order. In this regard, the Commission should order May Systems to show cause in writing, within 21 days of the date of the order, why it should not be fined in the amount proposed or have certificate no. 6086 canceled for apparent violation of Rule 25-4.043, Florida Administrative Code. May Systems' response must contain specific allegations of fact or law. If May Systems fails to respond to the Show Cause Order, certificate number 6086 should be involuntarily canceled.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, then May Systems will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If May Systems timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If May Systems does not respond to the show cause order within five business days after the expiration of the show cause response period, then May Systems' certificate should be canceled. This docket may then be closed administratively.
(Fordham)

DOCKET NO. 990995-TI
DATE: September 23, 1999

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then May Systems will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If May Systems timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If May Systems does not respond to the show cause order within five business days after the expiration of the show cause response period, May Systems' certificate should be canceled. This docket can then be closed administratively.