

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of Show Cause) DOCKET NO. 951163-WU
Proceedings Against The Peoples) ORDER NO. PSC-95-1362-FOF-WU
Water Service Company for) ISSUED: November 2, 1995
Violation of Rule 25-30.145,)
F.A.C., Audit Access to Records,)
in Escambia County.)
_____)

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 REQUIRING RESPONSE TO
AUDIT REQUESTS BY A TIME CERTAIN

BY THE COMMISSION:

BACKGROUND

The Peoples Water Service Company (Peoples or utility) is a Class A utility providing water service to the public in Escambia County and elsewhere, and headquartered in Towson, Maryland. The Escambia County facility, the Warrington Plant, serves 8,008 residential customers, 1,893 commercial, government and irrigation customers and 30 fire systems in Pensacola, Florida. In Order No. PSC-95-0578-FOF-WU, issued May 9, 1995, we acknowledged Peoples' reorganization, through which the Warrington Plant, then a division of Peoples, became a wholly-owned subsidiary of Peoples. In 1994, the utility reported total operating revenues of \$3,091,225.

On June 30, 1995, the Division of Water and Wastewater requested that the Division of Auditing and Financial Analysis (AFA) perform an audit to investigate potential overearnings for Peoples. By letter dated the same day, AFA informed the utility of the impending audit. On July 12, 1995, our staff auditor faxed a letter to the utility treasurer requesting the basic documentation that would be needed to complete the audit. Upon the utility's request, on July 25, 1995, our staff met with counsel for the utility. Staff explained the reasons for the audit, as well as the requirements of Rule 25-30.145, Florida Administrative Code, regarding audit access to records. While the list of requested documents is extensive, these items are standard items requested in each audit of rate base, capital structure, and net

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operating income. Our auditor began receiving some of the data on July 21, 1995. However, he has had difficulty receiving timely and complete responses to most of the audit requests.

On September 12, 1995, AFA sent a letter to the utility documenting a phone conversation with the utility treasurer regarding the importance of timely responses and provided the utility with a copy of Rule 25-30.145, Florida Administrative Code. This letter confirmed that the utility had agreed to provide all document requests related to plant additions by September 18, 1995, and all remaining document requests by September 19, 1995. On September 19, 1995, our auditors visited the utility to review the responses and begin the final work on the audit. However, the responses delivered were to a large extent incomplete. On September 22, 1995, AFA again wrote to the utility to express concern regarding the utility's continued violation of the Commission's access to records rule and to inform the utility that the staff was preparing a recommendation to order the utility to show cause why it should not be fined for its continued noncompliance.

In this order, we determine that the utility shall provide complete responses to all outstanding audit requests by a time certain, as well as complete and timely responses to all future audit requests. We defer our decision on whether to initiate a show cause proceeding for failure to provide reasonable audit access to the utility's records.

AUDIT RESPONSES

Section 367.156(1), Florida Statutes, provides that:

[t]he commission shall continue to have reasonable access to all utility records and records of affiliated companies, including its parent company, regarding transactions or cost allocations among the utility and such affiliated companies, and such records necessary to ensure that a utility's ratepayers do not subsidize nonutility activities.

Rule 25-30.145(1)(b), Florida Administrative Code, implementing Section 367.156(1), Florida Statutes, states in pertinent part:

Reasonable access means that company responses to audit requests for access to records shall be fully provided within the time frame established by the auditor. In establishing a due date, the auditor shall consider the location of the records, the volume of information

requested, the number of pending requests, the amount of independent analysis required, and reasonable time for the utility to review its response for possible claims of confidentiality or privilege.

This audit was initiated with an audit due date of September 30, 1995. We have never audited this utility. It has been operating in Escambia County since 1937. In light of this, the auditors initiated an audit work plan to address rate base that would not be unduly burdensome and still provide assurance that the utility's rate base accurately reflected the utility's investment in utility plant-in-service. The late and incomplete responses in this audit, which have become a pattern, have seriously jeopardized the auditor's ability to complete the audit in a timely manner and meet audit expectations.

This audit is not related to a docketed investigation, nor is it constrained by a statutory deadline. However, the audit was initiated based on concerns that the utility might be overearning. These concerns were based on our staff's review of the utility's annual reports for 1993 and 1994. Further, we are concerned with the substantial number of affiliate transactions and with the fact that the utility's rate base has never been audited by the Commission. We are awaiting the audit results to determine the utility's achieved earnings level. The longer the utility is able to delay the audit, the longer the utility continues to collect its current rates without our in-depth review.

The utility put forth numerous reasons for the delays. First, the utility was involved in a Commission proceeding regarding collection of contributions in aid of construction (CIAC) gross-up. Our auditor allowed the utility additional time for the issues in that docket to be resolved. That matter was resolved in our Proposed Agency Action Order No. PSC-95-0478-FOF-WU, issued June 21, 1995.

Second, the utility has repeatedly expressed concern that the requested items are confidential. Each time, our auditor informed the utility that it should indicate that concern on the Audit Document and Record Request/Notice of Intent Form. The information in question, pursuant to Rule 25-22.006(3)(a), Florida Administrative Code, would then be treated as confidential until 21 days after the audit exit conference. At that time, the utility would have to file a request for confidential classification in order to maintain continued confidential handling.

The utility has repeatedly called our auditor to disagree with the auditor's requests for certain information. The utility has

also complained that it has been unable to provide the requested information in a timely manner as its staff is limited. The utility, as a wholly-owned subsidiary, on a stand-alone basis has annual revenues of more than \$3 million, and would appear to have resources sufficient to respond fairly to the audit requests.

We lack numerous documents to complete this audit. The utility has had more than three months to provide some of the outstanding requests. Based on the foregoing, we find it appropriate to order the utility to supply complete responses to all presently outstanding audit requests by October 13, 1995. Further, we find it appropriate to require the utility to promptly inform the Commission if, in good faith, it has problems in meeting this deadline, and, in that event, the utility must, without fail, supply complete responses to the presently outstanding audit requests by October 20, 1995. In addition, we find it appropriate to order the utility to submit timely and complete responses to all future audit requests. Pursuant to Rule 25-30.145(c), Florida Administrative Code, if the utility does not agree with the auditor's assessment of a reasonable response time and is unable to resolve the disagreement with the auditor, the utility should discuss the issue with successive levels of supervision at the Commission.

SHOW CAUSE PROCEEDING

Section 367.156, Florida Statutes, provides that the Commission shall have reasonable access to the utility's and its affiliated companies' records. Rule 25-30.145(1)(b), Florida Administrative Code, sets forth what is contemplated by "reasonable access," including the factors pertinent to establishing due dates. Rule 25-30.145(1)(c), Florida Administrative Code, sets forth the process to be invoked by the utility if it is unable to reach agreement with the auditor on what is a reasonable response time to the auditor's requests.

As we have noted, it appears that the utility has persistently delayed and withheld its responses to staff's audit requests in the absence of sufficient reason, thereby obstructing our staff's efforts to conclude a proper audit of the utility in a reasonable period of time. We have reason to be concerned on the basis of the utility's recent annual reports that the utility might be overearning. The utility's conduct potentially impacts its customers adversely, in that it threatens to extend the period of time during which the utility may be charging unjustifiable rates and collecting revenues that ought to be placed subject to refund. The utility has not invoked the process provided by rule through

which it may resolve disagreements with the auditor in an orderly way.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have willfully violated any provision of Chapter 367, Florida Statutes, or lawful rule of the Commission. Nevertheless, we do not find it appropriate at this time to determine whether or not to order Peoples to show cause why it should not be assessed a penalty for violation of Rule 25-30.145, Florida Administrative Code. Hence, we defer our decision.

Based on the foregoing, it is

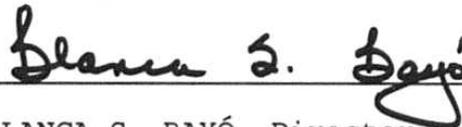
ORDERED by the Florida Public Service Commission that The Peoples Water Service Company shall provide complete responses to all presently outstanding audit requests by October 13, 1995. It is further

ORDERED that if The Peoples Water Service Company has a good faith problem with providing complete responses to all presently outstanding audit requests by October 13, 1995, it shall promptly inform the Commission, and, thereafter, provide complete responses to the presently outstanding audit requests by October 20, 1995, without fail. It is further

ORDERED that The Peoples Water Service Company shall provide timely and complete responses to all future audit requests. It is further

ORDERED that this docket shall remain open pending the resolution of the issues herein addressed.

By ORDER of the Florida Public Service Commission, this 2nd day of November, 1995.



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.