

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 990995-TI
ORDER NO. PSC-99-2085-SC-TI
ISSUED: October 22, 1999

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE

BY THE COMMISSION:

May Systems, Inc., (May Systems) is a provider of interexchange telecommunications services, pursuant to certificate number 6086, granted by Order No. PSC-99-1023-CO-TI, issued on May 21, 1999. As a provider of interexchange telecommunications services in Florida, May Systems is subject to the rules and regulations of the Commission.

On May 26, 1999, we sent to May Systems a certified letter, informing them of a complaint filed with this Commission. On June 2, 1999, the U.S. Postal Service returned the certified correspondence, which was unclaimed by the company. On June 15, 1999, our staff called Mr. Yektayi, May Systems' owner and Commission liaison, inquiring why he failed to respond. Mr. Yektayi informed our staff that he was not aware of the correspondence, but his attorney may have received it. Mr. Yektayi, at that time, indicated that May Systems was out of business, and he was advised of the procedures for voluntary cancellation of his certificate. He was also faxed a copy of the original certified letter, to ensure that the company had the information. May Systems was given until the close of business, June 16, 1999, to submit a response. To date, they have not responded to our inquiries.

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FPC-RECORDS/REPORTING

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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.

Pursuant to Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each day a violation continues, 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, Florida Statutes. Utilities are charged with knowledge of our rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally," Barlow v. United States, 32 U.S. 404, 411 (1833).

We believe that May Systems' conduct in not responding to our staff's inquiries, in apparent violation of Rule 25-4.043, 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 titled In re: Investigation into the Proper Application of Rule 25-14.003, Florida Administrative Code, 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, we 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 Ferob's conduct at issue here, would meet the standard for a "willful violation."

May Systems shall have 21 days from the date of this order to respond in writing why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, or why certificate number 6086 should not be canceled if the fine is not submitted within five business days after the Order is issued. If May Systems timely responds to the show cause order, this docket shall remain open, pending resolution of the show cause proceeding. If May Systems does not respond to this Order to Show Cause, the fine shall be deemed assessed. If May Systems fails to respond to the Order to Show Cause, and the fine is not received within five business days after the expiration of the show cause response period, certificate number 6068, issued to May Systems, Inc., shall be canceled and this docket closed.

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Based on the foregoing, it is

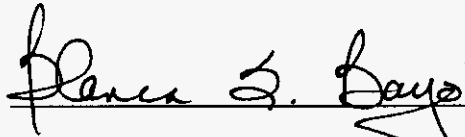
ORDERED by the Florida Public Service Commission that May Systems, Inc. shall show cause in writing within 21 days of the date of this Order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, or have their certificate canceled if the fine is not submitted within five business days after the show cause response period ends. It is further

ORDERED that any response to the Order to Show Cause filed by May Systems, Inc. shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, as well as a waiver of right to a hearing, and will result in the automatic assessment of the appropriate fine and cancellation of certificate. It is further

ORDERED that in the event May Systems, Inc. fails to respond to this Order and the fine is not received within five business days after the expiration to the show cause response period, certificate 6086 shall be canceled, effective 5 days after that date, and the unpaid fine will be forwarded to the Comptroller's office for collection, and this docket will be closed.

By ORDER of the Florida Public Service Commission this 22nd day of October, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CLF

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 12, 1999.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.