

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a) DOCKET NO. 900761-WS
Staff Assisted Rate Case in) ORDER NO. PSC-92-1298-FOF-WS
Citrus County by LAKE) ISSUED: 11/10/92
UTILITIES, LTD.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER ASSESSING PENALTY

BY THE COMMISSION:

By Order No. 24750, issued July 2, 1991, we required Lake Utilities, Ltd. (Lake Utilities or Utility) to complete certain water plant improvements within six months of the date of the Order. This deadline expired January 2, 1992. The utility was also required to complete certain wastewater improvements within eighteen months of the date of the Order.

The utility failed to complete any of the water improvements within the deadline set by the Commission. By letter dated January 17, 1992, the utility explained that it was unable to obtain financing for the plant improvements.

By Order No. PSC-92-0209-FOF-WS, issued April 14, 1992, this Commission required the utility to show cause why it should not be fined up to \$5,000 per day, pursuant to Section 367.161, Florida Statutes, for its failure to comply with Order No. 24750.

Order No. PSC-92-0209-FOF-WS also required the utility to identify the methods of financing considered, each attempt made to obtain financing, and the name of each institution or potential source of financing contacted. This Order also required the utility to include any documentation of these efforts, including any rejection letters and for the utility to explain why its owners have not provided capital for expansion.

On June 10, 1992, the utility, in response to the show cause Order, asserted that it should not be fined because it did not willfully violate or knowingly refuse to comply with Order No. PSC-92-0209-FOF-WS. Further, it asserts it made a good faith effort to obtain financing and considered both loans from lending

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institutions and the possibility of additional capital investment from investment firms to finance the required improvements. In its response, the utility supplied three letters from lending institutions which denied loans due in part to lack of personal guarantees. Moreover, the utility asserted in its response that the principals of Lake Utilities cannot give personal guarantees on loans because they do not have the financial resources to subsidize the utility's cash flow to meet the three to five years amortization periods which banks are currently requiring.

In its letter, the utility states that it contacted a lending institution that deals specifically in assisting water and wastewater utilities with financing. According to the utility, this lending institution informed the utility by phone that requests of less than \$100,000 were not feasible. Further, the utility asserts that it anticipates encountering the same obstacles in attempting to finance the required wastewater plant improvements. The utility did not request a hearing in its response.

After considering the utility's response, we find that the utility has failed to establish that it has made a good faith effort to obtain financing as required by Order No. 92-0209-FOF-WS. In the utility's June 10, 1992, response, the utility's president indicates "Mr. Norman Mears verbally contacted three banks." We are concerned about the utility's failure to obtain written loan applications from any of the three banks that it contacted.

Section 367.171, Florida Statutes, authorizes fines up to \$5,000 for each offense and provides that each day the violation continues constitutes a separate offense. We find it appropriate to fine the utility \$5,000. However, this fine will be suspended if the utility shows a good faith effort to secure financing and by meeting with our staff and the utility customer's representatives within thirty days of the issuance of this Order.

In addition, several utility customers testified at our October 20, 1992, Agenda Conference, and contended that tax records they reviewed indicated that the land upon which the utility is located is owned by Century Realty Funds, Ltd., and not the utility. We are very concerned that the utility may not own or have title to the land upon which the facilities are located. Rule 25-30.037(1)(0), Florida Administrative Code, requires evidence, that the utility owns the land upon which the utility treatment facilities are located such as a warranty deed, or a copy of an agreement that provides for the continued use of the land, such as a 99-year lease.

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We hereby order the utility to provide this Commission documentation that it owns the land within 30 days of the issuance of this Order. If the utility fails to provide evidence of the required ownership in accordance with the above-referenced Rule, a separate show cause proceeding may be necessary.

Based on the foregoing, it is, therefore,

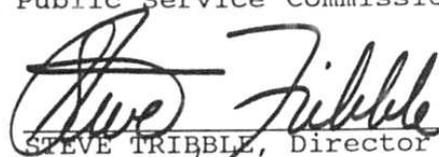
ORDERED by the Florida Public Service Commission that Lake Utilities, Ltd., is hereby assessed a fine totalling \$5,000 for violation of Section 367.071, Florida Statutes, and Orders Nos. 24750 and PSC-92-0209-FOF-WS, which fine shall be paid to this Commission. It is further

ORDERED that, if Lake Utilities, Ltd., complies with the requirements of this Order, that any fines assessed shall be suspended. It is further

ORDERED that Lake Utilities, Ltd., shall provide documentation that it owns the land upon which the treatment facilities are located. It is further

ORDERED that this docket shall remain open pending review of the utility's compliance with the requirements of this Order.

By ORDER of the Florida Public Service Commission this 10th day of November, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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

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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 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 or sewer 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.