

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of Show Cause) DOCKET NO. 940032-WU
Proceedings Against DEMETREE) ORDER NO. PSC-94-0836-FOF-WU
INDUSTRIES, INC. in Citrus) ISSUED: July 11, 1994
County for Failure to File 1991)
Annual Report)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER RESOLVING SHOW CAUSE PROCEEDING AND CLOSING DOCKET

Demetree Industries, Inc. (Demetree or utility) is a Class C utility, serving water customers in Citrus County. This utility obtained Certificate No. 396-W pursuant to Order No. PSC-92-0025-FOF-WU, issued on March 10, 1992, which approved a transfer of certificate from Utility Systems, Inc. (USI) to Demetree.

Demetree has not timely filed its 1991 annual report, as required by Rule 25-30.110, Florida Administrative Code. Rule 25-30.110, Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31 each year to file an annual report on or before March 31 of the following year. Requests for extension must be in writing and must be filed before March 31. One extension of 30 days is automatically granted. A further extension may be granted upon showing of good cause. Incomplete or incorrect reports are considered delinquent, with a 30 day grace period in which to supply the missing information.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3 per day. The penalty calculation is based on the number of days elapsed since March 31, or the approved extension date, and the actual date of filing. The date of filing is included in computing the number of days elapsed. The Commission may impose lesser or greater penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

RECORDED

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As of the date of the Agenda Conference, held on April 5, 1994, Demetree's 1991 report was 735 days late and the appropriate penalty, computed according to Rule 25-30.110, Florida Administrative Code, was \$2,205.

By Order No. PSC-94-0509-FOF-WU, issued April 27, 1994, the Commission ordered Demetree to show cause, in writing, within twenty days, why it should not be fined \$2,205 for its failure to comply with Rule 25-30.110, Florida Administrative Code. On May 17, 1994, Demetree filed a timely response.

In its response dated May 17, 1994, Demetree states that it took over the utility on July 30, 1991, from Utility Systems, Inc., (USI) and the Commission acknowledged the transfer in Order No. PSC-92-0025-FOF-WU, issued March 10, 1992. USI ran the utility inadequately, and ultimately went defunct. At this point, Demetree took over operations of the utility. Demetree found, upon takeover, that all books and records associated with the utility were not available. Demetree never operated a utility before USI's departure, as it is a real estate development company.

Demetree further states that it was not familiar with the Commission's rules and policies. It knew about the regulatory assessment fees, but not about the annual report requirements. Demetree first learned of these requirements only after a letter was sent to them by this Commission stating that the 1992 annual report was late. This letter made no reference to the 1991 annual report. The letter stating that the 1991 annual report was delinquent was sent to the utility on May 5, 1992, about three months before Demetree applied for the transfer. As previously mentioned, USI was running the utility at that time in an inadequate manner. Once Demetree learned of the delinquent 1992 annual report, it diligently worked to adequately prepare this report. The 1992 annual report was subsequently filed. Demetree has also filed its 1993 annual report, and has been complying with all the Commission's rules.

We have investigated the arguments presented in Demetree's response. With regard to the books and records not being available, it was verified through Docket No. 910850-WU (the transfer docket), exhibit G of Demetree's application, which was sworn to in an affidavit on August 8th, 1991, that the books and records were not available to Demetree. In Order No. PSC-92-0025-FOF-WU, issued March 10, 1992, this Commission unanimously approved the transfer from USI to Demetree.

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In consideration of the foregoing, we believe that Demetree has shown adequate cause why it should not be fined for failing to file its 1991 annual report and, therefore, we do not find it appropriate to fine this utility.

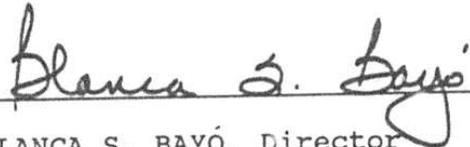
Since we are not fining this utility, no further action is required, and this docket is hereby closed.

Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that this show cause proceeding against Demetree Industries, Inc. is hereby resolved. It is further

ORDERED that Docket No. 940032-WU is hereby closed.

By ORDER of the Florida Public Service Commission, this 11th day of July, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 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.