

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show Cause Proceedings)
 against WEST VOLUSIA UTILITIES,)
 INC. in Volusia County for failure)
 to comply with 1987 annual report)
 requirements)
 _____)

DOCKET NO. 890687-WU
 ORDER NO. 21745
 ISSUED: 8-18-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER TO SHOW CAUSE

BY THE COMMISSION:

West Volusia Utilities, ("West Volusia"), a Class C utility, did not timely file a complete 1987 annual report as required by Rule 25-30.110, Florida Administrative Code. Rule 25-30.110 requires utilities subject to the Commission's jurisdiction as of December 31st each year to file an annual report on or before March 31st 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. Longer extensions 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 timely file a 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 \$3.00 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, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, impose lesser or greater penalties.

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West Volusia operated a utility system subject to this Commission's jurisdiction as of December 31, 1987. West Volusia filed its 1987 annual report on June 27, 1989. The report was due on or before March 31, 1988. West Volusia did not request or receive an extension of time for said filing. Two warning letters were sent and received by certified mail, posted on May 19, 1988 and July 20, 1988. The May 19, 1988 letter directed a response by June 15, 1988, and the July 20, 1988 letter directed a response by August 10, 1988.

A letter from the attorney for Volusia, received on June 16, 1988, stated the following explanation. The utility systems owned by his client were sold to W & T Utilities at the beginning of 1987. That sale was rescinded on November 27, 1987, and Southern States Utilities, Inc., purchased the systems on that same date. Southern States prepared the annual report for the period commencing November 27, 1987 and Volusia, with the cooperation of Southern States, is preparing the remainder. In order to complete the report, Volusia is "trying desperately" to obtain information from the owner of W & T Utilities that is necessary to complete the 1987 report. The letter concludes with a request for recognition of Volusia's good faith efforts to resolve the matter and "bear with it for a while". In an August 9, 1988, telephone conversation with our staff, the attorney for Volusia stated that the 1987 annual report would be filed within 3 weeks.

At our May 30, 1989 agenda conference, we deferred issuance of a show cause order for failure to file the 1987 annual report to allow time to consider a letter from the utility that had been received the day of that agenda conference. That letter, dated May 25, 1989, states that it is impossible for West Volusia to account for transactions that took place from 1984 because the subject utilities were sold in 1986 and 1987, and all of the utilities records were kept by other companies since the transfer, and for two years prior to the transfer.

In a June 16, 1989 telephone conversation with our staff, the attorney for West Volusia agreed to file the 1987 annual report on or before June 27, 1989. The report was filed on June 27, 1989. As of that date, the report is 453 days late and the appropriate penalty, computed according to Rule 25-30.110(7), Florida Administrative Code, is \$1,359.

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Based on the foregoing, we find that West Volusia failed to comply with the 1987 annual report requirements and is in violation of Rule 25-30.110, Florida Administrative Code. In view of the utility's transfer, we consider strict application of the \$3.00 per day fine established by Rule 25-30.110(7), Florida Administrative Code, unduly harsh. However, a waiver of any fine is not warranted in view of the utility's failure to adequately respond to the initial warning notices. Therefore, we find it appropriate to order West Volusia to show cause why it should not be fined \$1 per day, for a total of \$453, for its failure to timely file its 1987 annual report.

In the event that West Volusia fails to file a timely response to this show cause order, we authorize our staff to assess the fine as described herein. If West Volusia fails to respond to reasonable collection efforts by this Commission, we deem the fine to be uncollectible and hereby authorize referral of this matter to the Comptroller's Office for further collection efforts based on this Commission's finding that, under the aforesaid circumstances, further collection efforts by this Commission would not be cost effective. Two certified letters requesting payment shall constitute reasonable collection efforts.

Wherefore, in consideration of the foregoing, it is:

ORDERED by the Florida Public Service Commission that West Volusia Utilities, Inc., shall show cause, in writing, why it should not be fined \$1 per day for each day that its 1987 annual report is delinquent, for a total of \$453. It is further

ORDERED that West Volusia Utilities, Inc.'s written response must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-00870, by the close of business on September 11, 1989. It is further

ORDERED that West Volusia Utilities, Inc.'s response must contain specific allegations of fact and law. It is further

ORDERED that West Volusia Utilities, Inc.'s opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of noncompliance and

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assessment of penalty by this Commission, as required by Rule 25-330.110(6)(c), Florida Administrative Code. It is further

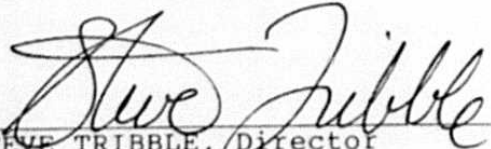
ORDERED that a failure to file a timely written response to this show cause order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that, in the event that West Volusia Utilities, Inc., files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that in the event that West Volusia Utilities, Inc., fails to file a timely response to to this show cause order, Commission staff is authorized to assess the fine pursuant to Rule 25-330.110, Florida Administrative Code and this order. It is further

ORDERED that if a fine is assessed and West Volusia Utilities, Inc., does not remit payment after reasonable collection efforts, we deem the fine to be uncollectible by this Commission and authorize referral to the Comptroller's Office for further disposition.

By ORDER of the Florida Public Service Commission,
this 18th day of AUGUST, 1989.


STEVE TRIBBLE, Director
Division of Records & Reporting

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