

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 961141-WU
proceedings against A.P.) ORDER NO. PSC-97-0286-FOF-WU
Utilities, Inc. for violation of) ISSUED: March 13, 1997
Rule 25-30.110(3), F.A.C.,)
Annual Reports, and Rule 25-)
30.120, F.A.C., Regulatory)
Assessment Fees.)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE AND REFERRING
REGULATORY ASSESSMENT FEES TO THE
COMPTROLLER'S OFFICE FOR COLLECTION

BY THE COMMISSION:

BACKGROUND

A.P. Utilities, Inc. (APU or utility) is a Class B water utility operating in Marion County. APU provides water service to 1,090 customers in twelve subdivisions. In its 1993 annual report (the last report filed by the utility), the utility reported water operating revenues of \$202,378 and operating expenses of \$149,173, resulting in net operating income of \$53,205.

By Order No. 21762, issued August 21, 1989 in Docket No. 881603-WU, this Commission granted a transfer of Certificate No. 380-W from North Central Florida Utilities, Inc. (NCFU) to APU. On November 30, 1990, Philip Woods purchased APU from Michael Blake, and by Order No. 24977, issued August 26, 1991 in Docket No. 910117-WU, this Commission approved the transfer of majority organizational control. The purchase also included the Aqua Pure Water Company (Aqua Pure) and Marico Properties, Inc. (Marico). By Order No. 25063, issued September 13, 1991 in Docket No. 910119, this Commission approved the transfer of assets from Marico to APU, and by Order No. 25075, issued September 17, 1991 in Docket No. 910118-WU, this Commission approved the transfer of assets from Aqua Pure to APU.

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FPSC-RECORDS/REPORTING

Since the transfer of ownership of APU to Philip Woods, the utility has failed to correct deficiencies in its 1993 annual report, failed to file its 1994 and 1995 reports, and failed to pay its regulatory assessment fees for each of the years 1991 through 1995. On May 17, 1996, we received a letter from Mr. Woods dated May 13, 1996 in which he stated that he is working to correct the problems. Mr. Woods stated that he was working with the accounting firm of Crippen, Crippen & Company to correct the annual report filing problems by June 30, 1996. He also stated that he hoped to sell the utility by the last quarter of 1996. To date, the utility has not corrected the annual report filing delinquencies or remitted the corresponding penalties. The utility also has not remitted the delinquent regulatory assessment fees and the corresponding penalties. Mr. Woods has notified us that he is still attempting to sell the utility.

By letter dated January 9, 1997, we notified Mr. Woods that because of his continued delinquency in failing to file annual reports and remit regulatory assessment fees, this docket was opened to initiate a show cause proceeding against the utility. Mr. Woods was directed to immediately file the delinquent annual reports, remit the delinquent regulatory assessment fees, and remit the appropriate penalties. Mr. Woods has failed to respond to this letter.

Accordingly, this order addresses the utility's failure to file its annual reports and remit its regulatory assessment fees.

ANNUAL REPORTS

Rule 25-30.110, Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31 of 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 B utilities is \$13.50 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.

1993 Annual Report

By letter dated June 6, 1994, we notified APU that since it had not filed its 1993 annual report, it was in apparent violation of Rule 25-30.110, Florida Administrative Code. The utility was directed to file a report by June 30, 1994. The utility filed its 1993 report on June 13, 1994. However, by letter dated July 27, 1994, we notified the utility of several deficiencies which were to be corrected by August 30, 1994. No further response was received from the utility with regard to these deficiencies, which currently remain uncorrected. As of the February 18, 1997 Agenda Conference, pursuant to Rule 25-30.110(7), Florida Administrative Code, the utility's penalty for the delinquent 1993 report is \$12,190.50 (903 days x \$13.50 per day). To date, the penalty has not been remitted to the Commission.

1994 Annual Report

With regard to the 1994 annual report, on March 16, 1995, we received a request from Crippen, Crippen, and Company, Certified Public Accountants, on behalf of APU, for a thirty-day extension to file the utility's 1994 annual report. The request was granted by letter dated March 17, 1995, and the report became due on April 30, 1995. On May 1, 1995, we received an additional request for extension to file the utility's 1994 report from the utility's accounting firm. The company explained that since Mr. Woods was busy as a full-time engineer, as well as the sole manager and operator of the utility company, he had been unable to supply the company with the information necessary to prepare the 1994 report, and to amend the 1993 report. The request was granted by letter dated May 9, 1995. The letter explained that no further extensions would be granted, and that the report was now due on July 31, 1995. However, the utility failed to meet this filing deadline, and the 1994 annual report currently remains outstanding. As of February 18, 1997, pursuant to Rule 25-30.110(7), Florida Administrative Code, the utility's penalty for the delinquent 1994 report is \$7,668 (568 days x \$13.50 per day). To date, the penalty has not been remitted to the Commission.

1995 Annual Report

The utility also failed to file a 1995 annual report, and no requests for extensions were received. As of February 18, 1997, the utility's penalty for the delinquent 1995 report is \$4,374 (324

days x \$13.50 per day), consistent with Rule 25-30.110(7), Florida Administrative Code. To date, the penalty has not been remitted to the Commission.

Summary and Findings on Annual Report Violations

Section 367.161(1), Florida Statutes provides that "[i]f any utility . . . knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty . . ." Utilities are charged with the knowledge of the Commission's 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). Thus, any intentional act, such as the utility's failure to file its annual report in accordance with Rule 25-30.110, Florida Administrative Code, would meet the standard for a "willful violation." 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, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

In consideration of the foregoing, we find it appropriate to order APU to show cause within 20 days why it should not be fined \$24,232.50 for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its 1994 and 1995 annual reports, and for failing to correct deficiencies in its 1993 annual report. The amount of the fine is comprised of the three years of penalties, pursuant to Rule 25-30.110(7), Florida Administrative Code, as discussed above.

REGULATORY ASSESSMENT FEES

In its establishment of rates, the Commission includes in its determination of the revenue requirements the utility's obligation to pay regulatory assessment fees. In that way, the utility is authorized to collect the amount of regulatory assessment fees it must pay. This utility has failed to pay regulatory assessment fees since it came under Mr. Woods' ownership.

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(5)(a), Florida Administrative Code, a statutory penalty plus

interest shall be assessed against any utility that fails to timely pay its regulatory assessment fees, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.
2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% annum.

In addition, pursuant to Sections 367.145(1)(b) and 367.161, Florida Statutes, and Rule 25-30.120(5)(b), Florida Administrative Code, the Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner.

Notices of delinquency for failure to pay its regulatory assessment fees were mailed to the utility on April 29, 1992, August 12, 1992, September 9, 1993, May 3, 1994, December 7, 1994, September 29, 1995, January 12, 1996, and April 15, 1996. The utility failed to respond to each of these notices. As of February 1997, the utility owes the following:

<u>YEAR</u>	<u>RAF AMOUNT</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1991	\$ 7,522.29	\$ 1,880.57	\$ 4,438.15	\$13,841.01
1992	8,667.59	2,166.90	4,073.77	14,908.26
1993	9,107.01	2,276.75	3,187.45	14,571.21
1994	9,340.15	2,335.04	2,148.23	13,823.42
1995	<u>9,522.32</u>	<u>2,380.57</u>	<u>1,047.46</u>	<u>12,950.35</u>
	<u>\$44,159.36</u>	<u>\$11,039.83</u>	<u>\$14,895.06</u>	<u>\$70,094.25</u>

This utility has historically collected the regulatory assessment fees, through its rates, and not paid them as required by statute. Regulatory assessment fees are intended to defray the costs incurred in Commission regulation of utilities. Apparently, the utility has no inclination to pay the fees voluntarily, nor does it appear that the utility is making a good faith effort toward payment. As discussed previously, Section 367.161, Florida Statutes, provides that any utility which knowingly and willfully violates any provision of that chapter, or any lawful rule or order of the Commission, shall incur a penalty, and utilities are charged with knowledge of the Commission's rules and statutes. Thus, the

intentional act of failing to remit regulatory assessment fees would meet the standard for a "willful violation."

Accordingly, the utility is ordered to show cause within 20 days why it should not be fined in the amount of \$25,934.89 for violation of Section 350.113, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, in that it failed to pay regulatory assessment fees for each of the years 1991 through 1995. Additionally, the \$44,159.36 in delinquent regulatory assessment fees shall be directed to the Comptroller's Office for collection.

RESPONSE TO SHOW CAUSE ORDER AND
CLOSING OF DOCKET

APU's response to the show cause order must contain specific allegations of fact and law. Should APU file a timely written response to this show cause order that raises material questions of fact and request a hearing pursuant to Section 120.57(1), Florida Statutes, this docket shall not be closed and further proceedings shall be scheduled before a final determination on this matter is made. If the utility responds timely but does not request a hearing, a recommendation will be presented to the Commission regarding the disposition of the show cause, and this docket shall not be closed. If the utility responds to the show cause by remitting the fines, this docket shall be closed administratively.

A failure to file a timely written response to the show cause order shall constitute an admission of the facts herein alleged, and a waiver of the right to a hearing. The fines, consisting of penalties of \$35,272.33 and interest of \$14,895.06 shall be imposed without further action by this Commission. The penalty amount consists of \$24,232.50 for the utility's failure to file its annual reports, and \$11,039.83 for failure to pay the regulatory assessment fees. The Commission shall make reasonable collection efforts which shall consist of two certified letters requesting payment. If reasonable collection efforts are unsuccessful, the collection of the fines, which includes penalties of \$35,272.33 and interest of \$14,895.06, shall be forwarded to the Comptroller's office and the docket shall be closed. The referral to the Comptroller's office would be based on the conclusion that further collection efforts by this Commission would not be cost effective. After referral to the Comptroller's office, the docket shall be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that A.P. Utilities, Inc., 3925 S.E. 45th Court, Suite E, Ocala, FL 34480-

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7431, shall show cause, in writing, within 20 days why it should not be fined a penalty of \$24,232.50 for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its 1994 and 1995 annual reports, and for failing to correct deficiencies in its 1993 annual report. It is further

ORDERED that A.P. Utilities, Inc. shall show cause, in writing, within 20 days why it should not be fined penalty plus interest of \$25,934.89 for violation of Section 350.113, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, in that it failed to pay regulatory assessment fees for each of the years 1991 through 1995. It is further

ORDERED that A.P. Utilities, Inc.'s written response must be received by the Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0863, by the close of business on April 2, 1997. It is further

ORDERED that A.P. Utilities, Inc.'s response to the show cause order must contain specific allegations of fact and law. It is further

ORDERED that should A.P. Utilities, Inc. file a timely written response to this show cause order that raises material questions of fact and request a hearing pursuant to Section 120.57(1), Florida Statutes, this docket shall not be closed and further proceedings shall be scheduled before a final determination on this matter is made. It is further

ORDERED that if A.P. Utilities, Inc. responds timely but does not request a hearing, this docket shall not be closed and a recommendation will be presented to the Commission regarding the disposition of the show cause. It is further

ORDERED that A.P. Utilities Inc.'s failure to file a timely written response to the show cause order shall constitute an admission of the facts herein alleged, and a waiver of the right to a hearing, and the fines, including penalties of \$35,272.33 and interest of \$14,895.06 shall be imposed without further action by this Commission. It is further

ORDERED that if reasonable collection efforts are unsuccessful, the collection of the fines, including penalties of \$35,272.33 and interest of \$14,895.06 shall be forwarded to the Comptroller's office and the docket shall be closed. It is further

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ORDERED that if A.P. Utilities, Inc. responds to the show cause by remitting the penalty, this docket shall be closed administratively. It is further

ORDERED that the \$44,159.36 in delinquent regulatory assessment fees shall be directed to the Comptroller's Office for collection.

By ORDER of the Florida Public Service Commission, this 13th day of March, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Dyer
Chief, Bureau of Records

(S E A L)

DCW

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 the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition 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 April 2, 1997.

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 pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(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.