

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Floridana Homeowners, Inc., in Manatee County for violation of Rule 25-30.110(3), F.A.C., Annual Reports.

DOCKET NO. 010816-WS
ORDER NO. PSC-02-0051-FOF-WS
ISSUED: January 7, 2002

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER DECLINING TO INITIATE SHOW CAUSE
PROCEEDINGS AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

Floridana Homeowners, Inc. (Floridana or utility) is a Class C Water and Wastewater utility located in Manatee County. Floridana became subject to Commission jurisdiction on October 10, 1995, and was granted a certificate of operation by Order No. PSC-97-0211-FOF-WS, issued February 24, 1997, in Docket No. 961232-WS. Floridana has 300 water and wastewater customers, and according to its 2000 annual report, has annual gross water revenues of \$41,448 and annual gross wastewater revenues of \$61,930. Floridana has a net operating loss of \$9,567 for water, and a net operating loss of \$37,128 for wastewater.

Floridana became subject to Commission jurisdiction on October 10, 1995, when the Manatee County Board of County Commissioners adopted Resolution No. R-95-109, pursuant to Section 367.171, Florida Statutes, declaring the privately owned water and wastewater utilities in Manatee County to be subject to the

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provisions of Chapter 367, Florida Statutes. The effect of the resolution was to invoke Commission jurisdiction over privately owned water and wastewater systems in Manatee County, and pursuant to Section 367.031, Florida Statutes, all utilities subject to this Commission's jurisdiction were required to obtain from the Commission certificates to provide water and wastewater service.

According to Order No. PSC-97-0211-FOF-WS, in which we granted the utility a grandfather certificate, Floridana was advised of our jurisdiction and the utility's responsibility to obtain a certificate by letter dated November 10, 1995. The utility originally applied for an exemption as a non-profit association, but did not attain the necessary requirements for such an exemption. The utility's application for a grandfather certificate was then delayed because the utility experienced some difficulty in changing its corporate status. Order No. PSC-97-0211-FOF-WS also stated that because Floridana was subject to our jurisdiction as of October 1, 1995, the utility was required by Rules 25-30.110(3) and 25-30.120(2), Florida Administrative Code, to remit past due regulatory assessment fees (RAFs) and file a 1995 annual report for that portion of 1995 when the utility became subject to our jurisdiction.

Pursuant to Rule 25-30.110(3), Florida Administrative Code, utilities subject to Commission jurisdiction are required to file an annual report on or before March 31 for the preceding year ending December 31. Annual reports are considered filed on the day they are postmarked or received by the Commission. Pursuant to Rule 25-30.110(3)(c), Florida Administrative Code, a utility may file a written request for an extension of time with the Commission no later than March 31, and one extension of 30 days will be automatically granted upon request.

The RAFs for the period of October 1, 1995 through December 31, 1996, were paid on April 29, 1997, and a subsequent late payment was received on September 8, 1997. However, it appears that the annual reports for those periods of time were never filed by the utility.

We contacted the utility regarding the missing 1995 and 1996 annual reports on January 23, 2001. We later received a letter from the utility's current treasurer dated March 23, 2001, which

referenced the 1997 payment of the RAFs for the period of October 1, 1995 through December 31, 1996, as well as a subsequent late payment, which had been paid by Irwin Keller, the President of the Homeowners Association at the time. The letter stated that Mr. Keller, who was also the accountant at the time, had assured them that everything was in order. The letter went on to state that Mr. Keller was currently unavailable and awaiting trial at the end of the month after an audit of the Homeowner's Association's books had revealed a large amount of unaccounted for funds and other irregularities.

We received an additional letter dated March 26, 2001, from the utility's current accountant regarding the matter of the missing 1995 and 1996 annual reports. In her letter, the accountant stated that as the utility's accountant, she could verify that most of the records from the 1995 and 1996 periods are missing, and that it would be impossible to reconstruct the records for an accurate Commission report. She further went on verify that the RAF amounts for 1995 and 1996 had been paid, and that these amounts had been based on amounts previously paid to Manatee County Public Utilities. Along with her letter, she enclosed a copy of a previous letter dated April 29, 1997, which had been sent to our legal division and which reflected this information. The utility's accountant further verified that Irwin Keller, who was the president and accountant during that time period, was currently awaiting trial on charges of embezzlement from Florida, and that any records that had been in his possession were missing.

We have jurisdiction to address this matter pursuant to Section 367.161, Florida Statutes.

NO SHOW CAUSE REQUIRED

Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to Commission jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Annual reports are considered filed on the day they are postmarked or received by the Commission. Pursuant to Rule 25-30.110(3)(c), Florida Administrative Code, a utility may file a written request for an extension of time with the Commission no later than March 31, and one extension of 30 days will be automatically granted upon request. Florida is in apparent

violation of Rule 25-30.110(3), Florida Administrative Code, for the failure to file its 1995 and 1996 annual reports.

Utilities are charged with the knowledge of this 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 timely file its 1995 and 1996 annual reports, 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, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., this 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 "in our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6. Section 367.161, Florida Statutes, authorizes this Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order or provision of Chapter 367, Florida Statutes.

Moreover, 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, based on the number of calendar days elapsed from March 31, or from an approved extended filing date. As of the date of the December 17, 2001 Agenda Conference, for the utility's 1995 and 1996 annual reports, we have calculated that the total penalty would be \$11,433 calculated as follows:

YEAR	CALCULATION	AMOUNT
1995	2,088 Days late x \$3.00 per day	\$6,264
1996	1,723 Days late x \$3.00 per day	\$5,169
	TOTAL DUE	\$11,433

The penalty, if it were assessed, would continue to accrue until such time as Floridana files its 1995 and 1996 annual reports. Further, we note that pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, we may, in our discretion, impose greater or lesser penalties for such noncompliance.

Although regulated utilities are charged with the knowledge of this Commission's rules and statutes, we believe that there are mitigating circumstances in this case which lead us to find that show cause proceedings are not warranted at this time, nor should penalties be assessed. As discussed previously, the utility's understanding was that the former president and treasurer of the utility, along with paying the RAFs for 1995 and 1996, had also filed the annual reports for that time period. Further, we have verified that the RAFs were paid for 1995 and 1996, and that these amounts were based on records of previous reports of revenues paid to Manatee County Public Utilities. The utility is current on its RAFs, and has continued to file its annual reports since 1997 through the present. In light of these circumstances, the information contained in the delinquent 1995 and 1996 annual reports is no longer needed for the ongoing regulation of the utility.

For the foregoing reasons, we do not believe that the apparent violation of Rule 25-30.110(3), Florida Administrative Code, rises in these circumstances to the level of warranting the initiation of a show cause proceeding. Moreover, we believe that the utility has demonstrated good cause for its apparent noncompliance. Therefore, we decline to order Floridana to show cause, in writing within 21 days, why it should not be fined for its failure to file its 1995 and 1996 annual reports. Further, the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, shall not be assessed, as the information contained in the delinquent reports is no longer needed for the ongoing regulation of the utility. Additionally, Floridana shall not be required to file its 1995 and 1996 annual reports.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that no show cause proceedings shall be initiated against Floridana Homeowners,

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Inc. for its apparent violation of Rule 25-30.110(3)(a), Florida Administrative Code. It is further

ORDERED that the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, shall not be assessed against Floridana Homeowners, Inc. It is further

ORDERED that Floridana Homeowners, Inc. shall not be required to file its 1995 and 1996 annual reports. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 7th day of January, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

LAE

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.

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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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.