

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show ) DOCKET NO. 920688-WU  
cause proceedings against ) ORDER NO. PSC-92-1121-FOF-WU  
AIRPORT ROAD DEVELOPMENT ) ISSUED: 10/06/92  
CORPORATION in Osceola County )  
for failure to remit penalty )  
fee for filing delinquent 1988 )  
and 1989 annual reports )  
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Airport Road Development Corporation (Airport Road or utility) is a Class C utility, serving 206 water customers in Osceola County. Airport Road has not timely filed its 1988 and 1989 annual reports, in violation of 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 31st each year to file annual reports on or before March 31st of the following year. Requests for extension must be in writing and must be filed before March 31st. 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)(a)(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 31st, or the approved extension date, and the actual date of filing. The date of filing is included in computing the number of days elapsed. This Commission may impose lesser or

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greater penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

Airport Road filed delinquent 1988 and 1989 annual reports. Regarding the 1988 report, on January 24, 1990, we mailed a certified letter to Ms. Grace Pattison, a representative of the utility, indicating that Airport Road had failed to file its 1988 annual report. The letter stated that if Airport Road did not file its 1988 annual report on or before February 24, 1990, we might initiate show cause proceedings and the possible assessment of fines in excess of the daily rate against the utility.

The 1988 annual report was received February 27, 1990. On September 20, 1991, we mailed a certified letter to Mr. Gary Suhl, President of Airport Road Development Corporation, which indicated a penalty of \$999 would be due for a delinquency of 333 days at \$3 per day. In the letter, we requested that the \$999 fine be paid on or before October 21, 1991.

Regarding the 1989 annual report, on July 2, 1990, we mailed a certified letter to the utility indicating that the 1989 annual report had not yet been received. The letter stated that if Airport Road did not file its 1989 annual report on or before July 31, 1990, we might initiate show cause proceedings and the possible assessment of fines in excess of the daily rate against Airport Road.

The 1989 annual report was received on July 20, 1990. On July 31, 1990, we mailed a certified letter to Mr. Suhl requesting that the utility correct several deficiencies in the report. Corrected deficiencies were received August 15, 1990.

On September 20, 1991, we mailed a certified letter to Mr. Suhl, which indicated a penalty of \$333 would be due for a delinquency of 111 days at \$3 per day. In the letter, we requested that the \$333 fine be paid on or before October 21, 1991.

On October 17, 1991, a letter was received from Mr. Suhl, which requested that any penalties for late filing of the 1988 and 1989 annual reports be waived due to the financial hardship of the utility. In his letter, Mr. Suhl stated that even though the utility had just received a rate increase, funds were limited due to construction of a new well. Enclosed with Mr. Suhl's letter was a letter dated September 24, 1991, from Ms. Grace Pattison, a

certified public accountant representing the utility. In her letter, Ms. Pattison stated that all fines for the late-filed annual reports should be "abated" because she was led to believe by Commission staff that all formal filings had been placed on hold until a decision regarding the outcome of an illegal rate implemented by the utility was determined. She also stated that the utility was unaware of these annual report filing requirements due to the fact that the utility had just been granted an original certificate.

In Order No. 23092, issued June 19, 1990, this Commission granted Airport Road an original certificate. The Order also required that the utility refund to customers all monies that were collected due to an illegal rate increase. The total refunded to customers was \$6,218.

We find it appropriate to require the utility to show cause why it should not be penalized for its untimely filing of its 1988 and 1989 annual reports should be waived in this proceeding. Even though Airport Road had just received its original certificate, it is responsible for knowledge of the statutes, rules, and regulations. Specifically, Rule 25-30.110(3), Florida Administrative Code, provides as follows:

The obligation to file an annual report for any year shall apply to any utility which is subject to this Commission's jurisdiction as of December 31 of that year, whether or not the utility has actually applied for or been issued a certificate.

Therefore, Airport Road is required to file the 1988 and 1989 annual reports, since it owned the utility on December 31 for the years in question, regardless of the fact that it did not hold a certificate in its name at that time.

In consideration of the foregoing, it appears that Airport Road has failed to comply with the 1988 and 1989 annual report filing requirements, and is in violation of Rule 25-30.110, Florida Administrative Code. Therefore, we order Airport Road to show cause, in writing, within 20 days, why it should not be fined \$999 and \$333 for its failure to comply with the 1988 and 1989 annual report filing requirements.

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If the utility fails to respond in writing within 20 days of the issuance of this Order, the penalties of \$999 and \$333, shall be imposed without further action by this Commission. The failure of the utility to file a timely response to this show cause order shall constitute both an admission of the facts alleged and a waiver of any right to a hearing.

If Airport Road 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. Reasonable collection efforts shall consist of two certified letters requesting payment.

If, however, the utility responds to the show cause by remitting the \$999 and \$333 penalties, no further action is required, and this docket shall be closed administratively.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Airport Road Development Corporation, in Osceola County, shall show cause, in writing, within twenty days, why it should not be fined \$999 and \$333 for failure to file its 1988 and 1989 annual reports as required by Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that Airport Road Development Corporation's written response must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 26, 1992. It is further

ORDERED that Airport Road Development Corporation's response must contain specific allegations of fact and law. It is further

ORDERED that Airport Road Development Corporation's opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission, as required under Rule 25-30.110(6)(c), Florida Administrative Code. It is further

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ORDERED that a failure to file a timely 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 Airport Road Development Corporation 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 if Airport Road Development Corporation fails to file a timely response to this show cause order, the fines of \$999 and \$333 shall be imposed, pursuant to Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that if reasonable collection efforts are unsuccessful, the collection of the fines shall be forwarded to the Comptroller's Office and this docket shall be closed. It is further

ORDERED that if the utility responds to the show cause by remitting the penalties, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 6th day of October, 1992.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

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