

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK
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DATE: JULY 2, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (FLEMING) *KEF*
DIVISION OF ECONOMIC REGULATION (KAPROTH) *KK DM*
DIVISION OF COMMISSION CLERK AND ADMINISTRATIVE SERVICES
(MOORE) *VM / KB* *JDJ 198*

RE: DOCKET NO. 030448-WS - DISPOSITION OF DELINQUENT
REGULATORY ASSESSMENT FEES FOR MEADOWS UTILITY COMPANY,
INC. IN CITRUS COUNTY.

AGENDA: 07/15/03 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030448.RCM

CASE BACKGROUND

Meadows Utility Company, Inc. (Meadows) is a Class C Water and Wastewater utility located in Citrus County. Meadows was granted a certificate of operation by Order No. PSC-98-0043-FOF-WS, issued January 6, 1998, in Docket No. 951026-WS. By Order No PSC-99-1899-FOF-WS, issued September 24, 1999, in Docket No. 990996-WS, Citrus County rescinded Commission jurisdiction. Thus, Meadows has not been under the Commission's jurisdiction since 1999.

Meadows has failed to pay its regulatory assessment fees (RAFs) for 1999. Pursuant to Rule 25-30.120(2), Florida Administrative Code, the obligation to remit RAFs for any year shall apply to any utility which is subject to this Commission's jurisdiction on or before December 31 of that year.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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On November 21, 2002, staff contacted Paul LaFord, the utility director, via certified mail regarding the delinquent regulatory assessment fees. Staff never received a response. On May 12, 2003, staff again contacted Mr. LaFord and again received no response.

This recommendation addresses whether Meadows should be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to remit its regulatory assessment fees as required by Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code.

The Commission has jurisdiction to pursue collection efforts for the failure to timely pay RAFs pursuant to Sections 367.071, 367.145, and 367.161, Florida Statutes.

DISCUSSION OF ISSUES

ISSUE 1: Should Meadows Utility Company, Inc. be ordered to show cause, in writing, within 21 days why it should not be fined for failure to remit its regulatory assessment fees as required by Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code?

RECOMMENDATION: No. A show cause proceeding should not be initiated. Staff further recommends that the Commission refer the utility's unpaid regulatory assessment fees (RAFs) and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible. (FLEMING, KAPROTH)

STAFF ANALYSIS: In establishing rates, the Commission includes in its determination of revenue requirements the utility's obligation to pay RAFs. According to the information available to staff, this utility has outstanding RAFs for 1999.

Pursuant to Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each water and wastewater utility shall remit annually RAFs in the amount of 0.045 of its gross operating revenue. Pursuant to Rule 25-30.120(2), Florida Administrative Code, "[t]he obligation to remit the [RAFs] for any year shall apply to any utility which is subject to [the] Commission's jurisdiction on or before December 31 of that year or for any part of that year" Accordingly, Meadows is responsible for RAFs for the time period of 1999. In failing to remit the RAFs for this period, Meadows is in apparent violation of the above-referenced statutory and rule provisions.

Furthermore, pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, 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 percent for each 30 days or fraction thereof, not to exceed a total of 12 percent per annum.

Staff's calculation of the RAFs, plus penalties and interest owed by Meadows for the period indicated above is set out below. As of July 15, 2003, the amounts due would be as follows:

TIME PERIOD	RAF AMOUNT	PENALTY	INTEREST	TOTAL
1999 - WATER	\$295.29	\$73.82	\$118.11	\$487.22
1999 - WASTEWATER	\$478.56	\$119.64	\$191.43	\$789.63
TOTAL DUE				\$1,276.85

Staff Analysis on Whether Show Cause Action Should be Initiated

As indicated above, Meadows is in apparent violation of Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, for failure to submit RAFs.

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 pay RAFs, plus applicable penalties and interest, 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.

With respect to Meadows failure to remit RAFs and the penalties and interest incurred, staff believes that the circumstances in this case are such that show cause proceedings should not be initiated. Staff believes that a show cause proceeding and further collection efforts against Meadows would not

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be cost effective. Staff has already made attempts by letters dated November 19, 2001, November 21, 2002, and May 12, 2003, to collect the delinquent RAFs, penalties, and interest due from Meadows. Staff believes that any further attempts to collect would be futile, because in this situation, the utility is not currently regulated by this Commission.

For these reasons, staff recommends that show cause proceedings not be initiated against Meadows for its apparent violation of the aforementioned statutes and Commission rules. Staff recommends that the Commission refer the utility's unpaid RAFs and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. Because no further action is necessary, this docket should be closed. (FLEMING) ...

STAFF ANALYSIS: Because no further action is necessary, this docket should be closed.