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-M-E-M-O-R-A-N-D-U-M-

DATE: March 4, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Rodan) *JAR* *Walt*
Division of Economic Regulation (Kaproth, Peacock) *KK* *JP* *JS* *MW*
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RE: Docket No. 040087-WU – Initiation of show cause proceeding against Kemple Water Company for violation of Rule 25-30.110, Florida Administrative Code.

AGENDA: 03/16/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040087.RCM.DOC

Case Background

Kemple Water Company (Kemple or utility) is a Class C water utility located in Pasco County. Kemple became subject to Commission jurisdiction and was granted a certificate of operation by Order No. 6901, on September 12, 1975. As of September 30, 2002, Kemple owed Regulatory Assessment Fees (RAFs), along with associated penalties and interest, for 1996 through 2001. Since then, the utility has paid its delinquent RAFs and paid off the related penalties and interest. Kemple had filed its annual reports on time until 1997. The 1997 through 2000 annual reports were filed on April 5, 2002. The penalty owed for late filing of the annual reports on April 5, 2002, is \$10,632. The utility filed its 2001 annual report on January 1, 2003; therefore, the late filing penalty for 2001 is \$738. For 2002, Kemple filed its annual report on time.

This recommendation addresses whether Kemple should be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to file annual reports by the dates due as required by Rule 25-30.110(3), Florida Administrative Code.

DOCUMENT NUMBER-DATE

03154 MAR-04

FPSC-COMMISSION CLERK

Docket No. 040087-WU
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The Commission has jurisdiction pursuant to Section 367.161, Florida Statutes.

Discussion of Issues

Issue 1: Should Kemple be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to file annual reports by the dates due as required by Rule 25-30.110(3), Florida Administrative Code?

Recommendation: No. A show cause proceeding should not be initiated. Staff recommends that the penalties calculated according to Rule 25-30.110(7), Florida Administrative Code, for delinquent annual reports should not be assessed. (RODAN, KAPROTH, PEACOCK) -

Staff Analysis: 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. According to Commission records, this utility failed to file an annual report for the years 1997-2001 in a timely manner. Kemple was responsible for filing those annual reports in a timely manner, and because it failed to do so, is in apparent violation of Rule 25-30.110(3), Florida Administrative Code.

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. Using this \$3 figure and multiplying by the number of days from the time the annual reports were due through the time the annual reports were filed, the total penalty for the delinquent 1997-2001 annual reports is set out below.

YEAR	CALCULATION	AMOUNT
1997	1,434 x \$3/day	\$4,302
1998	1,069 x \$3/day	\$3,207
1999	703 x \$3/day	\$2,109
2000	338 x \$3/day	\$1,014
2001	246 x \$3/day	\$738
	TOTAL DUE	\$11,370

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, the Commission may, in its discretion, impose greater or lesser penalties for such noncompliance.

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). Section 367.161(1), Florida Statutes, authorizes the 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 provision of Chapter 367, Florida Statutes. By failing to file its 1997-2001 annual reports in a timely manner, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. In Commission 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.

Staff believes that the circumstances in this case are such that show cause proceedings should not be initiated. The utility's annual reports for the years 1997-2001 have now all been filed. Kemple filed its 2002 annual report on time and staff believes that the utility will continue to file its annual reports in a timely manner. Furthermore, Kemple has been cooperative with staff and paid off its delinquent RAFs for 1996 through 2001, and related penalties and interest.

Accordingly, staff recommends that show cause proceedings not be initiated against Kemple for its apparent violation of the aforementioned statutes and Commission rules. Staff also recommends that the Commission exercise its discretion as stated in Rule 25-30.110(6)(c), Florida Administrative Code, and not assess the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, for delinquent annual reports, for the reasons stated above.

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Issue 2: Should this docket be closed?

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

Staff Analysis: Because no further action is necessary, this docket should be closed.