

Bane YMB  
Cooke MJC

RECEIVED-FPSC

State of Florida

08 FEB 21 PM 12:24

# Public Service Commission



COMMISSIONER  
CLERK

101 CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

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

**DATE:** February 21, 2008

**TO:** Office of Commission Clerk (Cole)

**FROM:** Office of the General Counsel (Fleming) *KETAB*  
Division of Economic Regulation (Daniel, Kaproth, Redemann) *PS*  
Division of Regulatory Compliance & Consumer Assistance (Hicks, Vandiver) *192* *Q* *lit*

**RE:** Docket No. 080064-WU – Complaint against East Marion Sanitary Systems Inc. by Mabelle Gregorio, Angela and Dennis Fountain, and Terry Will.

**AGENDA:** 03/04/08 – Regular Agenda – Proposed Agency Action for Issues 1-3 – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\080064.RCM.DOC

### Case Background

East Marion Sanitary Systems Inc. (East Marion or utility) is a Class C utility providing water and wastewater service to approximately 98 customers in Marion County. Water and wastewater rates were last established for this utility in a staff assisted rate case in 2002.<sup>1</sup> The utility reported water and wastewater revenues of \$62,037 in its 2006 Annual Report. The system is located in the St. Johns River Water Management District (SJRWMD).

<sup>1</sup> Order No. PSC-02-1168-PAA-WS, issued August 26, 2002, in Docket No. 010869-WS, In re: Application for staff-assisted rate case in Marion County by East Marion Sanitary Systems, Inc.

DOCUMENT NUMBER-DATE

01351 FEB 21 08

FPSC-COMMISSION CLERK

On February 14, 2007, Ms. Mabelle Gregorio filed a complaint (727135W) regarding the cost of an irrigation meter. Ms. Gregorio paid a total of \$897.00 for the installation of the irrigation meter; however, the utility's tariff contains a \$70.00 meter installation fee. On October 2, 2007, Angela and Dennis Fountain filed a complaint (753207W) regarding the \$597.00 they were required to pay for an irrigation meter. On December 17, 2007, Mr. Terry Will filed a complaint (762448W) regarding the disconnection of his water service and the resulting reconnection charges.

Staff has been unsuccessful in resolving these complaints informally. Attachment A contains a timeline showing the correspondence between the customers, the utility, and staff. The utility has charged fees for irrigation meters, customer deposits, and disconnection charges that have not been approved by the Commission. In addition, the utility has failed to respond on a timely basis to staff inquiries regarding the complaints and a request to audit the utility's records.

Issues 1, 2, and 3 address whether the utility should be required to make refunds to Ms. Gregorio, Mr. and Mrs. Fountain, and Mr. Will, respectively. Issues 4 and 5 address whether the utility should be show caused for charging outside its authorized tariff and its failure to respond to staff on a timely basis regarding the complaints and the audit request. The Commission has jurisdiction pursuant to Sections 367.011, 367.081, 367.121, and 367.161, F.S.

### **Discussion of Issues**

**Issue 1:** What disposition should be taken to resolve the complaint of Ms. Mabelle Gregorio against East Marion Sanitary Systems, Inc.?

**Recommendation:** East Marion should refund \$824.00 to Ms. Gregorio and provide a statement to the Commission that the refund was made within 30 days of the Commission's order becoming final. (Redemann)

**Staff Analysis:** On February 14, 2007, Ms. Mabelle Gregorio filed Complaint No. 727135W regarding the cost of an irrigation meter. During the period from February 8, 2007, to June 15, 2007, Ms. Gregorio gave the utility checks in the amounts of \$597.00, \$497.00, \$100.00, \$597.00, and \$197.00 for an irrigation meter. The first check for \$597.00 was never cashed and Ms. Gregorio stopped payment on it. The check for \$497.00 was returned to Ms. Gregorio. Ms. Gregorio paid a total of \$894.00 for the irrigation meter which was installed on June 19, 2007. Ms. Gregorio's receipt for the \$497.00 payment, which was returned to her, indicates that she was charged \$437.00 for an initial connection fee and \$60.00 for a deposit.

On November 30, 2007, in response to staff's request for an explanation from the utility regarding several complaints, Mr. Hein, the utility owner, provided several reasons for the charges for the irrigation meters. According to Mr. Hein, in order to obtain an irrigation meter the customer must also pay the contribution in aid of construction (CIAC) charge. He also cited the cost to install an irrigation meter, the need for separate piping for the meter, and a potential revenue shortfall, as more fully described in Issue 4, as reasons for the charges. A specific, detailed explanation was not provided for the total \$894.00 collected from Ms. Gregorio for the irrigation meter.

The utility's approved service availability charges for water service to a new customer include a meter installation charge of \$70.00, a plant capacity charge of \$112.00, and a main extension charge of \$255.00. The utility is not entitled to collect a plant capacity charge from an existing residential customer. There is no evidence that Ms. Gregorio needed to reserve additional water capacity; rather, she merely wanted an irrigation meter so that her irrigation demand would not be reflected in her wastewater bill. While a separate service line may have been needed for the irrigation meter, there is no provision for that in the utility's tariff. The utility's main extension charge is for a main extension for new connections to the water system. Although it appears that the charges to Ms. Gregorio included a customer deposit, there is no evidence that Ms. Gregorio had a history of late payments. Therefore, the utility was not entitled to require a deposit for the irrigation meter.

While staff agrees that the actual cost of the meter installation may have exceeded \$70.00, the utility may only charge the fees contained in its approved tariff. Staff has advised Mr. Hein that he may request an increase in his meter installation charge; however, as of the date of this recommendation, he has not filed a request. Therefore, since the utility was only entitled to charge \$70.00 for the irrigation meter, Ms. Gregorio should be refunded the \$824.00 she overpaid.

Docket No. 080064-WU  
Date: February 21, 2008

Staff recommends that the utility should be required to refund \$824.00 to Ms. Gregorio and provide a statement to the Commission that the refund was made within 30 days of the Commission's order becoming final.

**Issue 2:** What disposition should be taken to resolve the complaint of Angela and Dennis Fountain against East Marion Sanitary Systems, Inc.?

**Recommendation:** East Marion should refund \$527.00 to Angela and Dennis Fountain and provide a statement to the Commission that the refund was made within 30 days of the Commission's order becoming final. (Redemann)

**Staff Analysis:** On October 2, 2007, Angela and Dennis Fountain (Fountains) filed Complaint No. 753207W regarding the \$597.00 they were required to pay for an irrigation meter. The Fountain's built a house in 2007 and as part of the construction an irrigation meter was installed. The Fountains were charged \$597.00 for the irrigation meter in addition to the utility's approved water and wastewater service availability charges.

As previously discussed, Mr. Hein provided a letter on November 30, 2007, describing his reasons for the charges for the irrigation meter. No other specific explanation was given for the charges collected from the Fountains. As discussed in Issue 1, while staff agrees that the actual cost of the meter installation may have exceeded \$70.00, the utility may only charge the fees contained in its approved tariff. Staff has advised Mr. Hein that he may request an increase in his meter installation charge; however, as of the date of this recommendation, he has not filed a request. Therefore, since the utility was only entitled to charge \$70.00 for the irrigation meter, the Fountains should be refunded the \$527.00 they overpaid.

Staff recommends the utility should be required to refund \$527.00 to Angela and Dennis Fountain and provide a statement to the Commission that the refund was made within 30 days of the Commission's order becoming final.

**Issue 3:** What disposition should be taken to resolve the complaint of Terry Will against East Marion Sanitary Systems, Inc.?

**Recommendation:** East Marion should refund \$45.00 to Terry Will for the overcharge on the reconnection charge and provide a statement to the Commission that the refund was made within 30 days of the Commission's order becoming final. Further, staff recommends that the utility be required to provide a statement to the Commission that Mr. Will's bill was credited \$37.00 for the excess customer deposit within 30 days of the Commission's order becoming final. (Redemann)

**Staff Analysis:** On December 17, 2007, Mr. Terry Will filed Complaint No. 762448W regarding the disconnection of his water service and the resulting reconnection charges. According to Mr. Will, on September 28, 2007, his water service was disconnected without notice and he was charged a \$241.55 reconnection fee. The charges included a customer deposit of \$141.00, a disconnection fee of \$50.00, and a reconnection fee of \$15.00, in addition to the outstanding balance of \$35.55 for water and wastewater service.

On January 18, 2008, Mr. Hein responded to staff's inquiry about the complaint. According to Mr. Hein, Mr. Will's bill was mailed out on August 29, 2007, a disconnection notice was mailed out on September 21, 2007, and service was discontinued on September 28, 2007. Mr. Will provided a copy of his cancelled check and the envelope showing the postmark date of September 20, 2007; however, Mr. Hein stated that the payment was not received by the utility until October 4, 2007. In addition, Mr. Hein stated that Mr. Will pays his bill late on a regular and ongoing basis and that Mr. Will had been asked to pay a deposit in April and again in June 2007.

Pursuant to Rule 25-30.320, Florida Administrative Code (F.A.C.), service may be discontinued for nonpayment of bills only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customer. In addition, the notice must be separate and apart from any bill for service. Based on the information available, it appears that Mr. Hein complied with this rule.

Rule 25-30.311(7), F.A.C., provides that a utility may require a new deposit, where previously waived, in an amount not to exceed the average actual charge for water and wastewater for two billing periods for the prior 12 months. Therefore, Mr. Will's deposit should not have exceeded approximately \$104.00.

Pursuant to Rule 25-30.460(1)(c), F.A.C., a utility may apply for miscellaneous service charges, which may include rates for violation reconnections. A violation reconnection is a charge that is levied prior to reconnection of an existing customer after discontinuance of service for cause. The utility's approved violation reconnection charge is \$15.00 for water. The tariff specifies that if both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the company requires multiple actions. The reconnection charge for wastewater (actual cost) may only be charged to wastewater only customers because the utility is not able to shut off the water meter to discontinue wastewater service. The utility does not have an approved disconnection fee for water or wastewater

Docket No. 080064-WU  
Date: February 21, 2008

service. Therefore, it appears that Mr. Will should have only been charged \$15.00 to reconnect his water and wastewater service after it was disconnected.

On February 6, 2008, staff sent a letter to Mr. Hein indicating that it appeared that Mr. Will's deposit should have been \$104.00 instead of \$141.00 and that the reconnection charge should have been \$15.00 instead of \$60.00. On February 14, 2008, Mr. Hein responded that he agreed that the customer deposit should have been \$104.00 and that he intended to credit \$37.00 on Mr. Will's next bill. However, Mr. Hein continues to disagree that the disconnection charge should be only \$15.00. He stated that the wastewater tariff provides for a disconnection charge at the actual cost and there were multiple actions taken including several premise visits and meetings with Mr. Will.

Based on the above, it appears that Mr. Will should have paid \$15.00 for the violation reconnection instead of \$60.00, and a deposit of \$104.00 instead of \$141.00. Staff recommends that the utility should be required to refund \$45.00 to Terry Will for the overcharge on the reconnection charge and provide a statement to the Commission that the refund was made within 30 days of the Commission's order becoming final. Further, staff recommends that the utility be required to provide a statement to the Commission that Mr. Will's bill was credited \$37.00 for the excess customer deposit within 30 days of the Commission's order becoming final.

**Issue 4:** Should East Marion Sanitary Systems, Inc. be ordered to show cause in writing, within 21 days, why it should not be fined for its apparent violation of Section 367.081(1), F.S., and Rules 25-30.135(2) and 25-30.311(7), F.A.C., for charging rates and charges not authorized by the Commission?

**Recommendation:** Yes. East Marion should be ordered to show cause in writing, within 21 days why it should not be fined a total of \$1,500 for its apparent violation of Section 367.081(1), F.S., and Rules 25-30.135(2) and 25-30.311(7), F.A.C., charging rates and charges not authorized by the Commission. The order to show cause should incorporate the conditions stated below in the staff analysis. Further, the utility should be required to only charge its approved rates and charges and use the forms in its tariff until authorized to change by this Commission in a subsequent proceeding. (Fleming)

**Staff Analysis:** A utility may only charge rates and charges that have been approved by the Commission pursuant to Section 367.081, F.S. In addition, Rule 25-30.135(2), F.A.C., provides that, “[n]o utility may modify or revise its rules or regulations or its schedules of rates and charges until the utility files and receives approval from the Commission for any such modification or revision.”

As discussed in Issues 1, 2, and 3, East Marion has overcharged a number of customers. Ms. Mabelle Gregorio paid a total of \$894, and the Fountains paid \$597 to have an irrigation meter installed; however, the utility’s tariff contains a meter installation charge of \$70.00. In response to staff’s request for an explanation from the utility, Mr. Hein stated that he disagrees with staff that the utility has to provide an irrigation meter for \$70.00 for several reasons: Mr. Hein believes that (1) the \$70.00 meter installation fee is correct only for household use with the appropriate gallonage charge for water and sewer; (2) the customer qualifies for this rate only after paying the appropriate contribution in aid of construction (CIAC) fees; (3) the fee is based on the cost of installation in 1987; (4) there is no way to install an irrigation meter to the existing piping or valving that is currently in existence; (5) the utility would have a considerable loss if it were required to charge only \$70.00; and (6) the utility’s rates were developed based on irrigation demand.

While staff does not dispute that the actual cost for the installation of an irrigation meter may exceed \$70.00, the utility may only collect the rates and charges that have been approved by the Commission. It is the utility’s responsibility to request an increase in charges that it believes are insufficient. Although Mr. Hein’s letter of November 30, 2007, requests that the utility be given 30 days to provide documentation as the actual cost of installing an irrigation meter and to amend its tariff, the utility has not provided that information to date.

Mr. Terry Will was required to pay a customer deposit of \$141.00, a disconnection fee of \$50.00, and a reconnection fee of \$10.00 subsequent to his service being discontinued on September 28, 2007. Mr. Hein responded to Mr. Will’s complaint by fax on January 18, 2008. In his response, Mr. Hein stated that the Commission staff established a deposit in the amount of \$141 during the utility’s staff assisted rate case. In addition, he stated that the violation reconnection fee is \$15.00 for water and the actual cost incurred by the utility for wastewater, making the total \$60.00 for a violation reconnection.

Rule 25-30.311(7), F.A.C., provides that a utility may require a new deposit, where previously waived, in an amount not to exceed the average actual charge for water and wastewater for two billing periods for the prior 12 months. The \$141 customer deposit referred to by Mr. Hein is for new customers who have not yet received service from the utility. Mr. Will's bills for water and wastewater service for June through September 2007, ranged from \$35.55 to \$51.93. Therefore, it appears that Mr. Will's deposit should not have exceeded approximately \$104.00.

The utility's approved violation reconnection charge is \$15.00 for water. The tariff specifies that if both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the company requires multiple actions. The utility does not have an approved disconnection fee for water or wastewater service. Therefore, as discussed in Issue 3, it appears that Mr. Will should only have been charged \$15.00 to reconnect his water and wastewater service after it was disconnected.

In addition to collecting meter installation fees, customer deposits, and violation reconnection charges in excess of those approved by the Commission, the utility has revised its application form to reflect information and charges that have not been approved by the Commission. The revised application form provides that service may be disconnected after 48 hours notice for a returned check, and after two returned checks, bills must be paid in cash or money order only; however, there is no provision in the Commission's rules or the utility's tariff to require payment in cash or by money order only as a result of returned checks. The form also reflects a reconnection charge of \$50.00 during regular hours and \$80.00 after regular hours.

In his November 30, 2007, response to staff, Mr. Hein stated that he had not yet ascertained when or why the revised application was used. He stated that the application was provided to the customer by a management company that had been hired, that he would try to make a determination as to when the application started being used, and make sure that the correct application is used in the future. As of the date of this recommendation, Mr. Hein has not provided any additional information to staff.

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), F.S., 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, F.S., or any lawful rule or order of the Commission. By failing to comply with the above-noted requirements of Section 367.081(1), F.S., and Rules 25-30.135(2) and 25-30.311(7), F.A.C., in a timely manner, the utility's acts were "willful" in the sense intended by Section 367.161, F.S. 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.

Based on the above, staff recommends that East Marion be made to show cause in writing, within 21 days, why it should not be fined a total of \$1,500 for its apparent violations noted above. Staff proposes a \$1,500 fine, based on \$500 per customer, for the customer overcharges addressed in Issues 1, 2, and 3. Staff recommends that the show cause order incorporate the following conditions:

1. The utility's response to the show cause order should contain specific allegations of fact and law;
2. Should East Marion file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Sections 120.569 and 120.57(1), F.S., a further proceeding will be scheduled before a final determination of this matter is made;
3. A failure to file a timely written response to the show cause order should constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue;
4. In the event that East Marion fails to file a timely response to the show cause order, the fine should be deemed assessed with no further action required by the Commission;
5. If the utility responds timely but does not request a hearing, a recommendation should be presented to the Commission regarding the disposition of the show cause order; and
6. If the utility responds to the show cause order by remitting the fine, this show cause matter should be considered resolved.

The utility should be put on notice that failure to comply with Commission orders, rules, or statutes will again subject the utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S. Further, the utility should be required to only charge its approved rates and charges and use the forms in its tariff until authorized to change by this Commission in a subsequent proceeding.

**Issue 5:** Should East Marion Sanitary Systems, Inc. be ordered to show cause in writing, within 21 days, why it should not be fined for its apparent violation of Section 367.156(1), F.S., and Rules 25-22.032(6), 25-30.110, and 25-30.145, F.A.C., concerning customer complaints and audit requests?

**Recommendation:** Yes. East Marion should be ordered to show cause in writing, within 21 days why it should not be fined a total of \$500 for its apparent violation of Section 367.156(1), F.S., and Rules 25-22.032(6), 25-30.110, and 25-30.145, F.A.C. The order to show cause should incorporate the conditions stated below in the staff analysis. In addition, the utility should be ordered to respond to the staff audit requests, as discussed in the staff analysis, within 30 days of the Commission's order becoming final. (Fleming)

**Staff Analysis:** Pursuant to Rule 25-22.032(6)(b), F.A.C., concerning customer complaints:

[t]he company shall make direct contact with the customer verbally or in writing and provide to the customer its response to the complaint within 15 working days after the Commission staff sends complaint to the company. Responses sent by mail must be postmarked within the 15 working day time period. The company shall also provide to the Commission staff, within 15 working days after the Commission staff sends the complaint to the company, a written response to the customer's complaint.

In addition, Rule 25-22.032(6)(e), F.A.C., provides that:

[t]he company shall respond in 7 working days to each subsequent request by staff after the initial company responses. If a complete response cannot be provided in the 7 working days, the company shall provide an update regarding the response every 15 working days until the response is completed.

Ms. Gregorio filed her complaint regarding the irrigation meter on February 14, 2007, and a response from Mr. Hein was requested by March 1, 2007. When no response was received, a second request was made on March 19, 2007, giving Mr. Hein until April 9, 2007 to respond. Mr. Hein's response to the complaint was received on April 11, 2007. The complaint was transferred from consumer affairs to ECR on April 20, 2007. From May through August, 2007, staff contacted Mr. Hein and Ms. Gregorio by phone in an attempt to resolve the complaint. On September 6, 2007, a letter was sent to Mr. Hein requesting a response by October 8, 2007; however, no response was received.

On October 2, 2007, Mr. Hein was faxed a copy of the complaint from the Fountains; however, no response was received. A certified letter was sent to Mr. Hein on October 17, 2007, requesting responses to both Ms. Gregorio and the Fountains' complaints by October 30, 2007. The certified letter was returned. A second certified letter and a fax regarding the complaints were sent to Mr. Hein on November 15, 2007; however, the certified letter was returned. Mr. Hein's response to the complaints was received by fax on November 30, 2007.

On December 19, 2007, Mr. Hein was sent a copy of Mr. Will's complaint and a response was requested by January 4, 2008. Mr. Hein's faxed response was received on January 18, 2008.

During this time period, at the request of technical staff, an audit of Mr. Hein's books and records was initiated to review the utility's collection of service availability charges and other fees for the period January 1, 2005, through October 15, 2007. A certified letter and a fax were sent to Mr. Hein on October 26, 2007, notifying him of the audit and requesting that Mr. Hein contact staff. The certified letter was signed for, but returned to the Commission unopened. On November 1, 2007, a second certified letter was sent to Mr. Hein regarding the audit and requesting a response by November 15, 2007. Only after several rounds of letters and phone calls did Mr. Hein contact staff on December 21, 2007, to discuss the audit. Staff has made and received several subsequent phone calls and phone messages regarding information that should be provided and still has not received any information. Staff has consistently used the contact information provided by the utility in corresponding with the utility.

In his November 30, 2007, letter, Mr. Hein addressed staff's efforts to contact him. Mr. Hein indicated that on several occasions he had responded and the response was not properly acknowledged or filed correctly. As to the certified letter requesting audit information that was returned to the Commission marked return to sender, refused, Mr. Hein stated that "this must have been done by the mail service," and "there are times that I am not available currently and I do not have as large of staff available as the PSC."

Rule 25-30.110(2), F.A.C., provides that, "[t]he utility shall also furnish the Commission with any information concerning the utility's facilities or operation that the Commission may request and require for determining rates or judging the practices of the utility." Section 367.156(1), F.S., provides that the Commission shall continue to have reasonable access to all utility records and records of affiliated companies. In addition, Rule 25-30.145(2), F.A.C., states:

Reasonable access means that company responses to audit requests for access to records shall be fully provided within the time frame established by the auditor. In establishing a due date, the auditor shall consider the location of the records, the volume of information requested, the number of pending requests, the amount of independent analysis required, and reasonable time for the utility to review its response for possible claims of confidentiality or privilege.

Subsection (3) of the same rule sets forth the process to be invoked by the utility if it is unable to reach agreement with the auditor on what is a reasonable response time to the auditor's requests.

It appears that the utility has persistently delayed and withheld its responses to staff's information and audit requests in the absence of sufficient reason. Staff took all available measures in attempting to resolve these complaints informally. Mr. Hein repeatedly failed to respond to staff requests for information in a timely manner and obstructed an audit of his books which staff believed was important to resolve the issues raised in the customers' complaints. His failure to respond to staff requests resulted not only in a violation of Rule 25-22.032, F.A.C., on timely response to a customer complaint, but also Commission rules regarding a utility's obligation to produce records, Rule 25-30.110, F.A.C., and the obligation to provide Commission staff with access to the utility's books and records, Rule 25-30.145, F.A.C.

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), F.S., 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, F.S., or any lawful rule or order of the Commission. By failing to comply with the above-noted requirements of Section 367.156(1), F.S., and Rules 25-22.032(6), 25-30.110, and 25-30.145, F.A.C., in a timely manner, the utility's acts were "willful" in the sense intended by Section 367.161, F.S. 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.

In failing to respond to staff requests for information and to provide information to the staff auditors, the utility's act was "willful" within the meaning and intent of Section 367.161, F.S. The utility's failure to respond to staff inquiries and to the staff audit requests, appear to be a violation of Section 367.156(1), F.S., and Rules 25-22.032(6), 25-30.110(2), and 25-30.145, F.A.C. Therefore, staff believes that a show cause proceeding is warranted at this time.

Based on the above, staff recommends that East Marion be made to show cause in writing, within 21 days, why it should not be fined a total of \$500 for its apparent violations noted above. Staff recommends that the show cause order incorporate the following conditions:

1. The utility's response to the show cause order should contain specific allegations of fact and law;
2. Should East Marion file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Sections 120.569 and 120.57(1), F.S., a further proceeding will be scheduled before a final determination of this matter is made;
3. A failure to file a timely written response to the show cause order should constitute an admission of the facts herein alleged and a waiver of the right to a hearing on this issue;
4. In the event that East Marion fails to file a timely response to the show cause order, the fine should be deemed assessed with no further action required by the Commission;
5. If the utility responds timely but does not request a hearing, a recommendation should be presented to the Commission regarding the disposition of the show cause order; and

6. If the utility responds to the show cause order by remitting the fine, this show cause matter should be considered resolved.

Further, the utility should be put on notice that failure to comply with Commission orders, rules, or statutes will again subject the utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues as set forth in Section 367.161, F.S.

In addition, staff notes that Rule 25-30.110(1)(b), F.A.C., requires each utility to maintain its records at the office or offices of the utility within this state and to keep those records open for inspection during business hours by Commission staff. Furthermore, Rule 25-30.115, F.A.C., requires all water and wastewater utilities to maintain their accounts and records in conformance with the 1996 National Association of Regulatory Utility Commissions, Uniform System of Accounts (NARUC USOA). Accounting Instruction 2.A. and 2.B. of the NARUC USOA for Class C utilities states:

- A. The books of accounts of all water utilities shall be kept by the double entry method, on an accrual basis. Each utility shall keep its accounts monthly and shall close its books at the end of each calendar year.
- B. All books of accounts, together with records and memoranda supporting the entries therein, shall be kept in such a manner as to support fully the facts pertaining to such entries.

Therefore, East Marion should be required to send to the Commission audit staff, within 30 days of the Commission's order becoming final, the following documentation:

1. General ledgers for the years 2005, 2006, and through October 15, 2007.
2. Details of other revenues for the years 2005, 2006, and through October 15, 2007.
3. Customers bills that support the other revenues for the years 2005, 2006, and through October 15, 2007.

**Issue 6:** Should this docket be closed?

**Recommendation:** No. If no person whose substantial interests are affected by the proposed agency action issues files a protest within 21 days of the issuance of the order, a Consummating Order will be issued. However, the docket should remain open for staff's verification that the refunds have been made and the audit information has been filed, and the disposition of the show cause issues. When the PAA issues are final and the show cause issues have been resolved, this docket may be closed administratively. (Fleming)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action issues files a protest within 21 days of the issuance of the order, a Consummating Order will be issued. However, the docket should remain open for staff's verification that the refunds have been made and the audit information has been filed, and the disposition of the show cause issues. When the PAA issues are final and the show cause issues have been resolved, this docket may be closed administratively.

02/8/07 Ms. Gregorio paid \$597 for irrigation meter

02/14/07 Ms. Gregorio filed complaint re installation of meter  
Response from Mr. Hein requested by 3/1/07

03/19/07 Response from Mr. Hein requested by 4/9/07

04/11/07 Response received from Mr. Hein indicating no record of payment or  
contact by Ms. Gregorio re meter installation

05/01/07 Staff contacted Mr. Hein by phone, Mr. Hein requested meter installation  
application from Ms. Gregorio  
Staff contacted Ms. Gregorio re need for meter installation application,  
she stopped payment on \$597 check

05/03/07 Call from Mr. Hein, meter installation application sent to Ms. Gregorio

05/11/07 Copy of application received from Ms. Gregorio, \$497 paid to utility for  
meter installation

05/00/07 Mr. Hein requested additional \$100 and later requested new application  
for meter installation with social security number and additional \$597  
Ms. Gregorio paid \$100 and \$597, \$497 check returned to Ms. Gregorio

06/15/07 Mr. Hein requested additional \$197 from Ms. Gregorio  
Ms. Gregorio paid \$197

06/19/07 Ms. Gregorio irrigation meter installed (total \$894 paid)

09/06/07 Staff letter to Mr. Hein requesting response due by 10/08/07

10/02/07 Mrs. Fountain filed complaint re installation of irrigation meter

10/05/07 Complaint faxed to Mr. Hein, response due 10/23/07

10/17/07 Certified letter sent to Mr. Hein regarding complaints, response due  
10/30/07, certified letter returned  
Staff letter to Mr. Hein initiating audit

10/26/07 Certified letter and fax re audit requests sent to Mr. Hein, letter signed for  
but returned unopened

11/01/07 Certified letter re audit sent to Mr. Hein

11/15/07 Certified letter and fax to Mr. Hein requesting response by 11/30/07,  
certified letter returned

11/30/07	Response received from Mr. Hein regarding the complaints
12/17/07	Staff letter to Mr. Hein requesting additional response by 12/21/07 re complaints Complaint filed by Mr. Will re disconnection, charges, and deposit
12/19/07	Staff letter to Mr. Hein re Mr. Will complaint, response due 1/4/08
12/21/07	Mr. Hein called staff re 12/17/07 staff letter
01/18/08	Response from Mr. Hein re Mr. Will complaint
02/06/08	Staff letter to Mr. Hein re Mr. Will complaint, response due 2/14/08
02/14/08	Response received from Mr. Hein regarding Mr. Will's complaint