

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the effect) DOCKET NO. 871206-PU
of 1986 Federal Tax Reform for 1988.)
_____)

In re: Investigation into the) DOCKET NO. 890430-PU
imposition of a penalty for failure)
to comply with the provisions of Rule) ORDER NO. 21175
25-14.003(4), F. A. C.)
_____) ISSUED: 5-8-89
AQUA PURE WATER COMPANY)
COVE UTILITIES, INC.)
JJ's MOBILE HOMES, INC.)
LEHIGH UTILITIES, INC.)
NORTH BEACH UTILITIES, INC.)
OCALA OAKS UTILITIES, INC.)
PALM BEACH COUNTY UTILITIES CORP.)
PONCE DE LEON UTILITY COMPANY OF)
ST. JOHNS COUNTY, INC.)
RAINBOW SPRINGS UTILITIES, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
JOHN T. HERNDON

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Rule 25-14.003(4), Florida Administrative Code, provides that on or before March 1st of every year following a tax rate change, each utility shall furnish a final tax report. By Order No. 20852, issued March 3, 1989, we gave Commission staff authority to administratively grant a sixty-day extension of the filing deadline upon written request received no later than the March 1 filing date.

The utility companies listed in the caption of this order requested extensions for filing their tax reports, but after the sixty-day extension period available to them. The companies made some attempt to comply with Commission rules by requesting their extensions before or shortly after receiving deficiency letters mailed by staff on March 21, 1989. The reasons given in support of their extension requests would have warranted extensions had the utilities filed such requests on time. Those reasons included: reliance on information in the annual report, which has a later due date than the tax report; extension requested for filing the federal income tax return; closing of the company books; audit not yet completed; and error by the accountant responsible for completing the report.

Based on the foregoing, we find it appropriate to waive the filing deadline in Rule 25-14.003(4), Florida Administrative Code, for the utilities listed above, and grant them extensions until June 15, 1989, to file their tax reports. However, since these companies have violated a Commission rule, they are subject to penalty.

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Section 367.161(2), Florida Statutes (1987), provides that the Commission has the power to impose a fine of up to \$5,000 a day for willful violation of any Commission rule or order. Since utilities subject to Commission jurisdiction are charged with knowledge of Commission rules, the aforementioned companies are subject to penalty for failure to comply with Rule 25-14.003(4), Florida Administrative Code. We believe that an appropriate guideline to use in determining the level of the fine for failure to timely file the tax report is the fine schedule set forth in Rule 25-30.110(7)(b), Florida Administrative Code, for failure to timely file annual reports. The penalties are based on a classification system related to annual revenues as follows:

\$25.00 per day for Class A utilities;
\$13.50 per day for Class B utilities;
\$ 3.00 per day for Class C utilities.

Since we have granted the aforementioned companies extensions for filing their tax reports, they shall be penalized only for the days elapsed between the March 1, 1989 due date and the date on which they requested their extensions. Further, the reasons given for their extension requests shall serve to mitigate by one-half the penalties calculated pursuant to Rule 25-30.110(7)(b), Florida Administrative Code. A schedule of the penalties is attached to this Order as Schedule A and by reference incorporated herein. Accordingly, we find it appropriate to require each of the aforementioned companies to show cause, in writing, why each should not be fined the amount set out in Schedule A, for failure to timely file their tax report.

Lehigh Utilities, Inc. (Lehigh) made an offer of settlement at the April 18, 1989, Agenda Conference, where this matter was addressed. Lehigh offered to pay \$187.50, the amount calculated pursuant to the previously mentioned rule. We hereby accept the settlement offer; therefore, no show cause order is necessary for Lehigh Utilities, Inc.

This Commission has serious reservations about assessing penalties that are too nominal to justify a show cause proceeding or to serve as any deterrent to violating Commission rules. Therefore, we instruct our staff to initiate rulemaking proceedings that will address meaningful minimum penalties for various rule violations.

It is, therefore,

ORDERED by the Florida Public Service Commission that each utility listed on Schedule A shall show cause, in writing, why it should not be fined the amount shown therein for failure to timely file the report required by Rule 25-14.003(4), Florida Administrative Code. It is further

ORDERED that each aforementioned utility's written response shall be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 30, 1989. It is further

ORDERED that each aforementioned utility's response must contain specific allegations of fact and law. It is further

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ORDERED that each aforementioned utility's opportunity to file a written response shall constitute its opportunity to be heard prior to a final determination of noncompliance or assessment of penalty. It is further

ORDERED that a failure to file a timely written 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 any of the aforementioned utilities files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57(1), Florida Statutes (1987), further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that the filing deadline in Rule 25-14.003(4), Florida Administrative Code, is hereby waived for the aforementioned utilities, and that extensions are granted until June 15, 1989, to file their reports. It is further

ORDERED that the offer of settlement of Lehigh Utilities, Inc. is hereby accepted as set forth in the body of this Order.

By ORDER of the Florida Public Service Commission,
this 8th day of May, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DCS

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SCHEDULE A

PENALTY SCHEDULE

<u>COMPANY</u>	<u>CLASS</u>	<u>PENALTY</u>
AQUA PURE WATER COMPANY	C	\$ 40.50
COVE UTILITIES, INC.	C	1.50
JJ's MOBILE HOMES, INC.	C	1.50
NORTH BEACH UTILITIES, INC.	C	21.00
OCALA OAKS UTILITIES, INC.	C	31.50
PALM BEACH COUNTY UTILITIES CORP.	C	187.50
PONCE DE LEON UTILITY	C	31.50