

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. 21178
25-14.003(4), F. A. C.)

ISSUED: 5-8-89

DYNAFLO SERVICES, INC.)
EAGLE CREEK UTILITY II, INC.)
EAST MARION SANITARY SYSTEMS, INC.)
EAST MARION WATER DISTRIBUTION, INC.)
EAST NAPLES SEWER TREATMENT CORP.)
FAIRFIELD FORT GEORGE UTILITY)
COMPANY, INC.)
FLORALINO PROPERTIES, INC.)
FOREST SHORES UTILITY COMPANY)
FOREST UTILITIES, INC.)
FOUNTAIN LAKES SEWER CORPORATION)
_____)

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 were sent certified letters notifying them that their tax reports were late and needed to be filed. Some utilities filed their tax reports before receiving the delinquency notice, while the rest filed their tax reports afterwards. Since the utilities violated a rule of the Commission by filing their tax reports after the March 1 deadline in Rule 25-14.003(4), Florida Administrative Code, they will be penalized as set forth below.

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

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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.

Certain utilities filed their tax reports before receiving the delinquency notices that were sent on March 21, 1989. As these utilities recognized their error and filed on their own initiative, their penalties will be mitigated by one-half. The remaining utilities' penalties will not be mitigated.

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 forth in Schedule A, which is attached to this Order and by reference incorporated herein.

It is, therefore,

ORDERED by the Florida Public Service Commission that each of the utilities 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 responses 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 responses must contain specific allegations of fact and law. It is further

ORDERED that each aforementioned utility's opportunity to file written responses 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.

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

by: Kay Flynn
Chief, Bureau of Records

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SCHEDULE A

PENALTY SCHEDULE

<u>COMPANY</u>	<u>CLASS</u>	<u>PENALTY</u>
DYNAFLO SERVICES, INC.	B	\$ 47.25
EAGLE CREEK UTILITY II, INC.	C	18.00
EAST MARION SANITARY SYSTEMS, INC.	C	69.00
EAST MARION WATER DISTRIBUTION, INC.	C	69.00
EAST NAPLES SEWER TREATMENT CORP.	C	87.00
FAIRFIELD FT. GEORGE UTILITY. CO.	C	78.00
FLORALINO PROPERTIES, INC.	C	87.00
FOREST SHORES UTILITY COMPANY	C	66.00
FOREST UTILITIES, INC.	B	364.50
FOUNTAIN LAKES SEWER CORPORATION	C	69.00