

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

In re: Investigation into the)
imposition of a penalty for failure)
to comply with the provisions of Rule)
25-14.003(4), F. A. C.)
DOCKET NO. 890430-PU)
ORDER NO. 21193)
ISSUED: 5-8-89)
ROYAL UTILITY COMPANY)
SOUTHEASTERN STATES UTILITY)

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. 20352, 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.

Royal Utility Company (Royal) claims that it did not receive the report form that Commission staff mailed on January 19, 1989. The form was not returned to the Commission. It was Royal's responsibility to request a form if it did not receive one. Royal ultimately mailed its tax report on March 28, 1989.

Southeastern States Utility (Southeastern) claims that its secretary resigned near the time the report was due, and "buried" the report in Southeastern's files. Southeastern mailed its tax report on March 27, 1989. Utilities must be held accountable for the actions of its employees if the Commission's rules are to have any force. Therefore, the failure of Southeastern's secretary to timely file the tax report is attributed to Southeastern.

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.

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As Royal and Southeastern have violated a Commission rule, they are subject to a penalty. However, we will mitigate by one-half the penalties calculated pursuant to Rule 25-30.110(7)(b), Florida Administrative Code, because of their individual circumstances.

Accordingly, we find it appropriate to require Royal and Southeastern to each show cause, in writing, why they should not be fined \$182.25 and \$39.00, respectively, for failure to timely file their tax reports.

It is, therefore,

ORDERED by the Florida Public Service Commission that Royal Utility Company shall show cause, in writing, why it should not be fined \$182.25 for failure to timely file its tax report required by Rule 25-14.003(4), Florida Administrative Code. It is further

ORDERED that Southeastern States Utility shall show cause, in writing, why it should not be fined \$39.00 for failure to timely file its tax report required by Rule 25-14.003(4), Florida Administrative Code. It is further

ORDERED that the Royal Utility Company and Southeastern States' 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 utility's written response must contain specific allegations of fact and law. It is further

ORDERED that each 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 a utility 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 Ferguson
 Chief, Bureau of Records