

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show Cause Proceedings	)	DOCKET NO. 890686-WU
against UNIVERSITY OAKS WATER	)	ORDER NO. 21403
SYSTEM in Levy County for failure	)	ISSUED: 6-19-89
to comply with 1987 Annual Report	)	
requirements	)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 JOHN T. HERNDON

ORDER TO SHOW CAUSE

BY THE COMMISSION:

University Oaks Water System, ("University"), a Class C utility, has not timely filed a complete 1987 annual report as required by Rule 25-30.110, Florida Administrative Code. Rule 25-30.110 requires utilities subject to the Commission's jurisdiction as of December 31st each year to file an annual report on or before March 31st of the following year. Requests for extension must be in writing and must be filed before March 31. One extension of 30 days is automatically granted. Longer extensions may be granted upon showing of good cause. Incomplete or incorrect reports are considered delinquent, with a 30 day grace period in which to supply the missing information.

Pursuant to Rule 25-30-110(6)(c), Florida Administrative Code, any utility that fails to timely file a 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 \$3.00 per day. The penalty calculation is based on the number of days elapsed since March 31, or the approved extension date and the actual date of filing. The date of filing is included in computing the number of days elapsed. The Commission may, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, impose lesser or greater penalties.

University operated a utility system subject to this Commission's jurisdiction as of December 31, 1987. University did not receive or request an extension of time for filing the 1987 annual report. Two warning letters were sent and received by certified mail, posted on May 19, 1988 and July 19, 1988. The May 19, 1988 letter directed a response by June 15, 1988, and the July 19, 1988 letter directed a response by August 10, 1988.

On August 4, 1988, this Commission received a letter from the utility's accountant describing serious health and financial difficulties that prevented the timely submittal of the 1986 and 1987 annual reports and requesting abatement of penalties. On August 12, 1988, the annual reports for 1986 and 1987 were filed. At that time, the 1987 report was 134 days late and the appropriate penalty, computed according to Rule 25-30.110(7), F.A.C., is \$402.

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On August 29, 1988, a letter was sent and received by certified mail notifying University of Commission staff's intention to recommend that this Commission issue an order directing the utility to show cause why it should not be fined \$3 a day for failure to file its 1987 annual report. University did not respond to said letter.

Order No. 20279, issued November 7, 1988, fined Univeristy \$750 for late filing of its 1986 annual report. This amount was equal to \$1.50 for each day of noncompliance. The customary \$3 per day penalty was reduced in view of the health and financial difficulties experienced by utility personnel. The fine was not waived in view of the utility's failure to respond to two warning letters. The \$750 fine was paid on January 9, 1989.

Because of the health and financial difficulties described above, University has not timely filed its 1988 annual report. However, the utility has promised to file a complete 1988 annual report on or before July 6, 1989.

Based on the foregoing, it appears that University has failed to comply with the 1987 annual report requirements and is in violation of Rule 25-30.110, Florida Administrative Code. In view of the health and financial difficulties, and the utility's timely response to the second warning letter, we find that the penalty should be less than \$3 per day. However, a complete waiver of fines would encourage noncompliance with the annual report requirements. Therefore, we find it appropriate to order University to show cause why it should not be fined \$1 per day for each day that its 1987 annual report is delinquent, for a total of \$134. However, imposition of this fine shall be suspended if University submits its 1988 annual report on or before July 6, 1989.

If imposition of the fine is not suspended and, in the event that University fails to file a timely response to this show cause order, we authorize Staff to assess the fine pursuant to the above-cited rule. If University fails to respond to reasonable collection efforts by this Commission, we deem the fire to be uncollectible and hereby authorize referral of this matter to the Comptroller's Office for further collection efforts based on this Commission's finding that, under the aforesaid circumstances, further collection efforts by this Commission would not be cost effective. Two certified letters requesting payment shall constitute reasonable collection efforts.

Wherefore, in consideration of the foregoing, it is:

ORDERED by the Florida Public Service Commission that University Oaks Water System shall show cause, in writing, why it should not be fined at least \$1 per day for each day that its 1987 annual report is delinquent, for a total of \$134. It is further

ORDERED that University Oaks Water System's written response must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida, 32399-00870, by the close of business on July 10, 1989. It is further

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ORDERED that University Oaks Water System's response must contain specific allegations of fact and law. It is further

ORDERED that University Oaks Water System's opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission, as required under Rule 25-30.110(6)(c), F.A.C. It is further

ORDERED that a failure to file a timely 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 University Oaks Water System files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, F.S., further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that in the event that University Oaks Water System fails to file a timely response to this show cause order, Staff is authorized to assess the fine pursuant to Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that, if University Oaks Water System files a complete 1988 annual report on or before July 6, 1989, the provisions of this Order, and the fine for failure to timely file the 1987 annual report shall be null and void. It is further

ORDERED that if a fine is assessed and University Oaks Water Company does not remit payment after reasonable collection efforts, we deem the fine to be uncollectible and authorize referral to the Comptroller's Office for further disposition.

By ORDER of the Florida Public Service Commission,  
this 19th day of JUNE, 1989.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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