

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)	DOCKET NO. 890776-SU
proceedings against PUNTA RASSA)	
UTILITIES, INC. in Lee County for)	ORDER NO. 21500
failure to pay penalty for late)	
filing of 1986 Annual Report)	ISSUED: 7-5-89
_____)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 JOHN T. HERNDON

ORDER REDUCING PENALTY

BY THE COMMISSION:

Rule 25-30.110, Florida Administrative Code, 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 allowed in which to supply the missing information.

The extent and nature of a utility's reporting requirement varies with its class, which is determined by its gross annual revenues. Under 25-30.110(6)(c), Florida Administrative Code, any utility that fails to timely file its annual report is subject to penalties absent demonstration of good cause for noncompliance. The schedule of penalties is set out in Rule 25-30.110(7), Florida Administrative Code: \$25.00 per day for Class A utilities; \$13.50 per day for Class B utilities; \$3.00 per day for Class C utilities. The penalty is based on the number of days elapsed between March 31 or the approved extension date and the actual date of filing. The date of filing is included in computing the days elapsed. Under Rule 25-30.110(6)(c), Florida Administrative Code, "[t]he Commission

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may, in its discretion, impose penalties for noncompliance that are greater or lesser than provided [by Rule 25-30.110(7), Florida Administrative Code]". The Commission has determined that \$2500.00 is the total maximum penalty which will be imposed for failure to timely file an annual report.

Punta Rassa Utilities, Inc. (Punta Rassa), a Class C utility, has not timely filed a 1987 annual report as required by Rule 25-30.110, Florida Administrative Code.

After receiving a warning letter, which was posted on June 15, 1987, Punta Rassa requested a blank report form by phone on August 4, 1987. On August 10, 1987, a telephone message was left for the President of the utility, Ms. Lucy Armenia, stating that the Commission needed a letter explaining any extenuating circumstances concerning the late filing. On December 10, 1987, another certified warning letter was posted to the utility. Ms. Armenia was contacted again on March 29, 1988. The 1986 annual report was received on April 1, 1988.

On July 12, 1988, a certified letter was posted to Punta Rassa requesting either a \$1,101.00 (367 x \$3.00) penalty payment or a letter explaining why the 1986 annual report was filed late. On July 28, 1988, a letter was received from Punta Rassa requesting either a waiver or reduction in the penalty. Ms. Armenia explained that the utility "barely survived" during 1986-87. During 1986, the utility experienced a net operating loss of \$45,236.00, and during 1987, it experienced a net operating loss of \$34,632.00. As Ms. Armenia explained in her letter:

The temporary off-site sewer on leased property was created as a temporary measure until the county corrected its plant problems. I do understand that we were remiss in filing the report, but through our crisis on the project, we kept the property up and the plant going. We do not have any violations and we are cooperating with Lee County for turnover of service. We also have subsidized the operation of the plant due to the lateness of the project and ...we are closing the plant as soon as Lee County is ready.

Punta Rassa filed its 1987 and 1988 annual reports.

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Because the 1986 annual report was filed on April 1, 1988, the utility should be fined. When the report was filed, it was 367 days late and subject to a \$1,101.00 penalty computed according to Rule 25-30.110(7), Florida Administrative Code. However, we find that because Punta Rassa responded to our letters and telephone calls, and because the utility experienced great financial difficulties during 1986-1987, the penalty should be mitigated to \$367.00 (367 x \$1.00) pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

We accept the check in the amount of \$367.00 from Punta Rassa, as appropriate penalty for late filing of its 1986 annual report.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Punta Rassa Utilities, Inc.'s payment of \$367.00 is accepted as penalty for late filing of its 1986 annual report as set forth in the body of this Order. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission
this 5th day of July, 1989.



STEVE TRIBBLE, Director
Director of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.