

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of Show Cause)	DOCKET NO. 890866-SU
Proceedings against ROOKERY BAY)	
UTILITY COMPANY in Collier County for)	ORDER NO. 21797
late filing of 1987 Annual Report)	
<hr/>		ISSUED: 8-28-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, CHAIRMAN
 THOMAS M. BEARD
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Pursuant to Rule 25-30.110(3), Florida Administrative Code, each utility subject to this Commission's jurisdiction as of December 31 of any year is required to file an annual report with the Commission for that year. The annual report is due on or before March 31 of the following year on forms prescribed by the Commission. Pursuant to Rule 25-30.110(3)(c), Florida Administrative Code, "[a] utility may file a written request for an extension of time with the Division of Water and Sewer no later than March 31. One extension of 30 days will be automatically granted upon request. A request for a longer extension must be accompanied by a statement of good cause and shall specify the date by which the report will be filed."

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file its annual report or to request an extension on or before March 31 shall be subject to penalties, "unless the utility demonstrates good cause for the noncompliance." Under Rule 25-30.110(3)(a), Florida Administrative Code, a utility's failure to receive a report form from the Commission does not constitute good cause for noncompliance. Also, incomplete or incorrect reports are considered delinquent, with a 30 day grace period in which to supply the missing information.

According 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 for Class C

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORDER NO. 21797
DOCKET NO. 890866-SU
PAGE 2

utilities in Rule 25-30.110(7), Florida Administrative Code, 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 when computing the number of days elapsed. Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, the Commission may impose lesser or greater penalties.

Rookery Bay Utility Company (Rookery Bay or utility) was, at all times material hereto, a Class C utility. On March 19, 1988, Rookery Bay requested a thirty-day extension of time to file its 1987 annual report. Its request was granted. Rookery Bay failed to file its 1987 annual report on or before April 30, 1988. On May 17, 1988, the Staff of this Commission (Staff) sent a warning letter to the utility by certified mail. Staff requested that the utility respond no later than May 30, 1988. By letter dated May 24, 1988, Rookery Bay responded that its certified public accountant would send the utility's 1987 annual report to the Commission within two weeks. Rookery Bay's 1987 annual report was filed twenty-five days late, on May 25, 1988. :

On June 10, 1988, Staff posted a certified letter to Rookery Bay. Staff requested that the utility submit either a penalty payment of \$75.00 (25 x 3.00) or a letter explaining why its 1987 annual report was filed late. The utility responded by letter dated June 20, 1988. Rookery Bay stated that its annual report was filed late because of a change in its accounting methods, because of unfamiliarity with the Commission's procedures and because its accountant had just had a baby.

Regarding the above we note that Rookery Bay became subject to our jurisdiction in 1985 and that it has had several years of experience working with this Commission and its rules and procedures. In addition, Rookery Bay has filed annual reports in previous years.

We do not believe that Rookery Bay's explanation demonstrates good cause for its annual report being filed late. Accordingly, we find it appropriate to require Rookery Bay to show cause, in writing, why it should not be fined \$75. In the event that Rookery Bay fails to file a timely response to this Order, the fine will be automatically assessed by a

ORDER NO. 21797
DOCKET NO. 890866-SU
PAGE 3

subsequent order. Further, should Rookery Bay fail to respond to reasonable collection efforts by Staff, we believe it appropriate to refer the fine to the Comptroller's Office for further collection efforts. Two certified letters requesting payment shall constitute reasonable collection efforts.

It is, therefore,

ORDERED by the Florida Public Service Commission that Rookery Bay Utility Company shall show cause, in writing, why it should not be fined \$75 for late-filing its 1987 annual report. It is further

ORDERED that Rookery Bay Utility Company's written response must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on September 18, 1989. It is further

ORDERED that Rookery Bay Utility Company's response must contain specific allegations of fact and law. It is further

ORDERED that Rookery Bay Utility Company'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, as required under Rule 25-30.110(5)(c), Florida Administrative Code. It is further

ORDERED that a failure to file a timely written response to this 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, if Rookery Bay Utility Company fails to file a timely written response to this Order, a \$75 penalty will be automatically assessed in a subsequent order. It is further

ORDERED that, if a fine is assessed pursuant to the provisions of this Order, and should Rookery Bay Utility Company fail to respond to reasonable collection efforts, this matter will be turned over to the Comptroller's Office for further collection efforts and this docket will be closed. It is further

ORDER NO. 21797
DOCKET NO. 890866-SU
PAGE 4

ORDERED that, in the event that Rookery Bay Utility Company files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made.

By ORDER of the Florida Public Service Commission
this 28th day of AUGUST, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP