

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show Cause Proceedings against)	DOCKET NO. 890678-WS
WYNDEMERE SERVICES, INC., in Collier)	ORDER NO. 22123
County for Failure to Comply with 1987)	ISSUED: 11-1-89
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 IMPOSING FINE FOR FAILURE TO COMPLY WITH
 1987 AND 1988 ANNUAL REPORT REQUIREMENTS

BY THE COMMISSION:

Rule 25-30.110, Florida Administrative Code, requires utilities subject to this Commission's jurisdiction as of December 31st each year to timely file an annual report. 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 fines. The fine set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3 per day. The Commission may, pursuant to Rule 25-30.110(6), Florida Administrative Code, impose lesser or greater penalties. Wyndemere Services, Inc., ("Wyndemere" or "utility"), a Class C utility, filed its delinquent 1987 annual report on July 24, 1989, and its delinquent 1988 annual report on August 29, 1989.

By letter of August 29, 1989, the utility requested that it be informed of precise penalties for the delinquent reports so that they may be paid promptly. The letter notes that Wyndemere had not responded to the previous show cause letters or orders in that the reason for the delinquency related primarily to poor performance of certain management persons who were recently replaced. The utility expressed its intention to ensure that reports are timely filed in the future. The letter also notes that historically and during the delinquent

DOCUMENT NUMBER DATE
 10774 NOV-1 1989
 FPSC-RECORDS/REPORTING

ORDER NO. 22123
DOCKET NO. 890678-WS
PAGE 2

reporting period, the utility has experienced substantial deficits and negative cash flows, and states that the effect of the fines will be material to the utility and requests that the fines be minimized if possible. On September 18, 1989, the Commission received a letter from the utility requesting reduction, from \$3 per day to \$1 per day, of the fine for the 1988 annual report.

1987 ANNUAL REPORT

By Order No. 21725, issued August 14, 1989, the Commission fined Wyndemere \$3 per day, for a total of \$1,440, for failure to timely file its 1987 annual report. By letter of August 29, 1989, Wyndemere requested to be informed of the precise amount to be paid and indicated its willingness to promptly pay that amount. Pursuant to Rule 25-30.110(6)(d), Florida Administrative Code, any utility which fails to pay a penalty within 30 days after its assessment shall be subject to interest applied to the penalty up to and including the date of payment of the penalty.

While the fine for the 1987 report was not paid within the 30 day time frame specified by the rule, the utility did request that it be informed of the exact amount due within the 30 day period. Under these circumstances, and in view of the utility's financial situation and actions to assure timely filing of future annual reports, we find that no interest charge is appropriate. Therefore, we impose \$1,440 as the total amount due for the utility's failure to timely file its 1987 annual report. However, payment of interest as directed by Rule 25-30.110(6)(d), Florida Administrative Code, will be required if the \$1,440 is not timely paid in accordance with this Order.

1988 ANNUAL REPORT

The Commission has not yet imposed fines, or issued a show cause order addressing Wyndemere's failure to timely file its 1988 annual report. Were the \$3 per day fine established by the rule imposed, the fine for Wyndemere's failure to timely file its 1988 annual report would be \$474. As noted above,

ORDER NO. 22123
DOCKET NO. 890678-WS
PAGE 3

Wyndemere has experienced substantial cash deficits and negative cash flows and taken action to assure that future reports are timely filed. In view of these circumstances, we find that a fine of \$1 per day for a total of \$158 is appropriate. However, payment of interest as directed by Rule 25-30.110(6)(d), Florida Administrative Code, will be required if the \$158 is not timely paid in accordance with this Order.

PAYMENT OF FINES

The utility's August 29, 1989 letter requested information as to the exact amount to be paid for delinquent filing of its 1987 and 1988 annual reports. We find that 10 days is a reasonable amount of time to allow the utility to remit payment. Therefore, we find it appropriate to direct Wyndemere to complete payment of fines herein assessed for delinquent filing of the 1987 and 1988 annual reports within 10 days of the date of this Order. Payment of interest as directed by Rule 25-30.110(6)(d), Florida Administrative Code, will be required if the fines are not timely paid.

WHEREFORE, in consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Wyndemere Services, Inc., is hereby assessed a fine of \$1,440 as the total amount due for the utility's failure to timely file its 1987 annual report. It is further

ORDERED that Wyndemere Services, Inc., is hereby assessed a fine of \$158 as the total amount due for the utility's failure to timely file its 1988 annual report. It is further

ORDERED that Wyndemere Services, Inc., shall complete payment of fines herein assessed for delinquent filing of the 1987 and 1988 annual reports within 10 days of the date of this Order. It is further

ORDERED that payment of interest as directed by Rule 25-30.110(6)(d), will be required if the aforesaid fines are not timely paid in accordance with this Order.

ORDER NO. 22123
DOCKET NO. 890678-WS
PAGE 4

By ORDER of the Florida Public Service Commission
this 1st day of NOVEMBER, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DAS

ORDER NO. 22123
DOCKET NO. 890678-WS
PAGE 5

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.