

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)	DOCKET NO. 890867-WU
proceedings against UTILITY SYSTEMS,)	
INC. in Citrus and Marion Counties)	ORDER NO. 23404
for late filing of 1987 annual report)	ISSUED: 8-27-90
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The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER REFERRING PENALTY TO COMPTROLLER

BY THE COMMISSION:

Background

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 timely file a complete annual report is subject to penalties, absent a demonstration of good cause for noncompliance. Under Rule 25-30.110(3)(a), Florida Administrative Code, a utility's failure to receive a report form from this 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.

DOCUMENT NUMBER-DATE

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Under Rule 25-30.110(7), Florida Administrative Code, the penalty for a Class C utility is \$3.00 per day. The penalty calculation is based upon 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. In addition, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, the Commission may impose lesser or greater penalties.

Utility Systems, Inc. (utility) failed to file a 1987 annual report for its Citrus or Marion County systems, or to request an extension therefor, on or before March 31, 1988. The utility was, at all times material hereto, a Class C utility.

On May 19, 1988, the Staff of this Commission (Staff) sent two letters by certified mail, warning the utility that its 1987 annual report was overdue. These letters went unanswered.

On June 8, 1988, the utility filed a 1987 annual report for Citrus County. The report was not complete. The utility did not file a report for Marion County.

On July 19, 1988, Staff sent another letter by certified mail regarding the utility's continued failure to file a 1987 annual report for Marion County. The utility responded by stating that the Marion County facility had been taken over by Barnett Bank "some time ago" and that an operator in Marion County had purchased the facility from the bank.

On September 13, 1988, Staff sent another letter by certified mail to notify the utility that its 1987 annual report for Citrus County was incomplete. Staff suggested that the utility file a complete report on or before September 30, 1988. This letter was returned unclaimed.

By Order No. 21796, issued August 28, 1989, we required the utility to show cause why it should not be fined, pursuant to Rule 25-30.110, Florida Administrative Code, for late filing its 1987 annual report. A copy of Order No. 21796 was sent to the utility's official mailing address, a post office box in Seminole County, by certified mail. It was also returned unclaimed.

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By Order No. 21796-A, issued November 29, 1989, this Commission found it appropriate to have the Seminole County Sheriff's office serve a copy of Order No. 21796 upon the utility. Therefore, by Order No. 21796-A, we amended Order No. 21796 to allow the utility an additional twenty days to respond to Order No. 21796. Orders Nos. 21796 and 21796-A were served upon the utility by the Seminole County Sheriff's Office on December 4, 1989. The utility failed to file a timely response to Order No. 21796.

According to Order No. 21796, the utility's failure to file a timely response would result in the automatic imposition of the appropriate penalty. Accordingly, by Order No. 22419, issued January 16, 1990, a penalty of \$3 per day was assessed against the utility. A copy of Order No. 22419 was sent to the utility by certified mail. It was returned unclaimed.

On February 5, 1990, a copy of Order No. 22419 was again sent to the utility by certified mail, accompanied by a collection letter. These were also returned unclaimed.

On March 6, 1990, Order No. 22419 and a collection letter were again sent to the utility by certified mail. These, too, were returned unclaimed.

Based upon the utility's consistent failure to accept mail from this Commission, we believe that any further collection efforts by this Commission will be fruitless. Accordingly, we believe that it is appropriate to refer this matter to the Comptroller's office for collection or for permission to write the fine off. As of the date of this Order, the utility's 1987 annual report is 875 days late, which would equate to a penalty of \$2,625. However, this Commission has previously determined that the value of such a report shall not exceed \$2,500. The penalty has, therefore, matured to a value of \$2,500.

It is, therefore,

ORDERED by the Florida Public Service Commission that the penalty assessed against Utility Systems, Inc., for late filing its 1987 annual report, is hereby deemed uncollectible and referred to the Comptroller's office for further collection efforts or for permission to write it off. It is further

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ORDERED that Docket No. 890867-WU be and is hereby closed.

By ORDER of the Florida Public Service Commission,
this 27th day of August, 1990.


STEVE TRIBBLE, Director
Division of Records and Reporting

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RJP

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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.