

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)	DOCKET NO. 900908-WU
proceedings against FORTY-EIGHT)	ORDER NO. 23848
ESTATES WATER SYSTEM in Lake)	ISSUED: 12-10-90
County for failure to file 1988)	
annual report in compliance with)	
Rule 25-30.110, F.A.C.)	
_____)	

The following Commissioners participated in the disposition of the following matter:

MICHAEL MCK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER TO SHOW CAUSE

BY THE COMMISSION:

CASE BACKGROUND

Forty Eight Estates Water System (Forty Eight Estates or utility), a Class C utility, has not timely filed a complete 1988 Annual Report. Rule 25-30.110(3), Florida Administrative Code, requires water and wastewater utilities subject to the Commission's jurisdiction as of December 31st of 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 31st. One extension of 30 days is granted automatically. 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. Two notices of noncompliance are sent by certified mail to each utility which has not sent a report.

Pursuant to Rule 25-30.110(6), Florida Administrative Code, any utility that fails to file a timely and complete Annual Report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set forth in Rule 25-30.110(7), Florida Administrative Code, is \$3.00 per day for Class C utilities. We

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have determined that the value of an annual report is \$2,500. The penalty calculation is based on the number of days elapsed from March 31, 1989, or the approved extension date to the actual date of filing or until the maximum fine of \$2,500 is reached. The date of filing is included in computing the number of days elapsed.

Forty-eight Estates was granted Certificate Number 498-W by Order No. 18839, issued February 10, 1988. No Annual Report has ever been filed for this utility. The utility was notified twice by certified mail of its noncompliance with the Annual Report filing requirement. It was advised that failure to file the report would result in the continued accrual of a fine of \$3.00 per day.

On March 21, 1990, the owner of Forty-eight Estates requested a sixty day extension of time in which to file both the 1988 and 1989 Annual Reports. The request for an extension was based on the need for additional time to complete the Annual Report forms. An extension of time until May 30, 1990, was granted for filing the 1989 report; however, no extension was granted for filing the 1988 report. No 1988 Annual Report has been filed.

Based on the foregoing, it appears that Forty Eight Estates has failed to comply with the 1988 Annual Report requirements and is in violation of Rule 25-30.110, Florida Administrative Code. Therefore, we find it appropriate to order Forty Eight Estates to show cause why it should not be fined \$3.00 per day for each day that its 1988 Annual Report is delinquent, up to a total of \$2,500. In the event that Forty Eight Estates 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 Forty Eight Estates fails to respond to reasonable collection efforts by this Commission, we deem the fine 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. After referral to the Comptroller's Office, this docket shall be closed.

Wherefore, in consideration of the foregoing, it is

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ORDERED by the Florida Public Service Commission that Forty-eight Estates Water System, shall show cause, in writing, why it should not be fined \$3.00 per day for each day that its 1988 Annual Report is delinquent, to a total of \$2,500. It is further

ORDERED that Forty-eight Estates Water System'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 December 31, 1990. It is further

ORDERED that Forty-eight Estates Water System's response must contain specific allegations of fact and law. It is further

ORDERED that Forty-eight Estates 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), Florida Administrative Code. 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 Forty-eight Estates Water System files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that in the event Forty-eight Estates 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 a fine is assessed and Forty-eight Estates Water System 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 and this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 10th
day of DECEMBER, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MF

by: Kay Flynn
Chief, Bureau of Records

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

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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),