

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show )  
cause proceedings against )  
WINDSTREAM UTILITIES COMPANY in) )  
Marion County for failure to )  
remit penalty fee for filing )  
delinquent 1989 annual report )  
\_\_\_\_\_ )  
 )

DOCKET NO. 920616-WU  
ORDER NO. PSC-92-0803-FOF-WU  
ISSUED: 08/11/92

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Windstream Utilities Company (Windstream or utility), is a Class C utility serving 105 water customers in Marion County. Based on information in the 1990 annual report, the utility reported water system operating revenues of \$31,371 and operating expenses of \$39,588, resulting in a net operating loss of \$8,217.

Windstream filed a delinquent 1989 annual report, in violation of Rule 25-30.110, Florida Administrative Code. 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 31st. 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 in which to supply the missing information.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida

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FOF-RECORDS/REPORTING

Administrative Code, for Class C utilities is \$3 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 in computing the number of days elapsed. The Commission may impose lesser or greater penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

On April 24, 1990, Windstream requested a 30-day extension in which to file the 1989 report. On May 1, 1990, the extension was granted and the deadline was extended to May 30, 1990. On June 21, 1990, Windstream requested another extension, which was granted on July 2, 1990, extending the deadline to July 31, 1990. The 1989 annual report was received March 19, 1991. On October 11, 1991, a certified letter was sent to Ms. Shari Dlouhy, President of Windstream Utilities Company, assessing a fine of \$783, 261 days delinquent x \$3 per day, and indicating that payment was due on November 11, 1991. On November 15, 1991, Crippen, Crippen & Co., C.P.A., sent a letter indicating that they had been retained in May 1990 to prepare the 1989 report but unintentional delays had been caused by Ms. Dlouhy's surgery early in 1990 and her considerable workload.

Based on the foregoing, it appears that Windstream filed a delinquent 1989 annual report in violation of Rule 25-30.110, Florida Administrative Code. Although we acknowledge the utility's explanation, we do not find it sufficient to excuse 261 days delinquency. Therefore, we find it appropriate to order Windstream to show cause within 20 days why it should not remit the fine of \$783 for its failure to comply with Rule 25-30.110, Florida Administrative Code. If Windstream fails to file a timely response to this show cause order, we hereby deem the fine of \$783 to be levied, pursuant to the above-cited rule.

If Windstream 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.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Windstream Utilities Company shall show cause, in writing, why it should not remit the fine of \$783 for filing a delinquent 1989 annual report. It is further

ORDERED that Windstream Utilities 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 August 31, 1992. It is further

ORDERED that Windstream Utilities Company's response must contain specific allegations of fact and law. It is further

ORDERED that Windstream Utilities Company'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

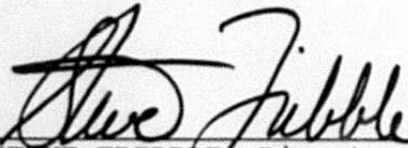
ORDERED that if Windstream Utilities Company files a written response that raises material questions of fact and requests a hearing pursuant to section 120.57, Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that if Windstream Utilities Company fails to file a timely response to this show cause order, the fine of \$783 is deemed levied, pursuant to Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that if the fine of \$783 is levied and Windstream Utilities Company 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 11th  
day of August, 1992.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

KAC

Commissioner Laredo dissented.