

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show)
cause proceedings against)
Green Acres Estates for)
failure to comply with 1989)
and 1990 annual report)
requirements.)
_____)

DOCKET NO. 920560-SU
ORDER NO. PSC-92-0925-FOF-SU
ISSUED: 09/03/92

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:

Green Acres Estates (Green Acres or utility) is a Class C utility, serving 166 wastewater customers in Volusia County. Green Acres has not timely filed its 1989 and 1990 annual reports, as required by 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 31 each year to file an annual report on or before March 31 of the following year. Requests for extension must be in writing and must be filed before March 31. One extension of thirty days is automatically granted. Longer extensions may be granted upon showing of good cause. Incomplete or incorrect reports are considered delinquent, with a thirty-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 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.

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By certified letter dated July 2, 1990, we informed Green Acres that its 1989 annual report had not been received, and by certified letter dated May 20, 1991, we informed Green Acres that its 1990 annual report had not been received.

Green Acres has a pattern of delinquency. By Order No. 19571, issued June 27, 1988, the Commission ordered Green Acres to show cause why it should not be fined for its failure to timely file its 1986 annual report. Green Acres failed to respond to the show cause. Therefore, by Order No. 19890, issued August 29, 1988, the Commission imposed a fine of \$891 for the utility's failure to file the 1986 report.

Thereafter, we determined that the utility's 1987 annual report had not been timely filed and that a fine of \$369 would be appropriate. On April 26, 1989, an agreement was reached with Green Acres' owner to make twelve monthly payments of \$105 each, totalling \$1,260, covering fines for both the 1986 and the 1987 annual reports. In May, 1989, Joseph Saba, owner of Green Acres, returned a signed copy of the agreement with a payment of \$210. No payments were received between June and August, 1989. In late September of 1989, Mr. Saba sent a payment of \$420. As of April 1991, Green Acres owed the Commission a total of \$683. In April 1991, we referred the matter to the Comptroller's office for collection.

On June 30, 1992, we approved the cancellation of Certificate No. 272-S due to the transfer of ownership of Green Acres to the City of Daytona Beach. However, we find that Green Acres is responsible for the outstanding annual reports due as of December 31, 1991.

As of the date of our vote at the Agenda Conference, held on August 18, 1992, Green Acres' 1989 report was 871 days late and the appropriate penalty, computed according to Rule 25-30.110, Florida Administrative Code, was \$2,613. However, consistent with our past practice, the penalty for this annual report violation is capped at \$2,500. As of August 18, 1992, the 1990 report was 506 days late and the penalty was \$1,518.

In consideration of the foregoing, it appears that Green Acres has failed to comply with the 1989 and 1990 annual report requirements, and is in violation of Rule 25-30.110, Florida

Administrative Code. Therefore, we hereby order Green Acres to show cause, in writing, within twenty days, why it should not be fined \$2,500 and \$1,518, respectively, for its failure to comply with the 1989 and 1990 annual report requirements.

If the utility fails to respond to the show cause within twenty days of the issuance of this Order, the penalties of \$2,500 and \$1,518 shall be imposed without further action by this Commission. The failure of the utility to file a timely response to the show cause order shall both constitute an admission of the facts and waive any right to a hearing.

If Green Acres fails to respond to reasonable collection efforts by this Commission, we deem the fine to be uncollectible and hereby authorize referral 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. Reasonable collection efforts shall consist of two certified letters requesting payment. If, however, the utility responds to the show cause by remitting the \$2,500 and \$1,518 penalties, no further action is required.

Based upon the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that Green Acres Estates, in Volusia County, shall show cause, in writing, within twenty days why it should not be fined \$2,500 and \$1,518, respectively, for failure to file its 1989 and 1990 annual reports as required by Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that Green Acres Estates' 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 23, 1992. It is further

ORDERED that Green Acres Estates' response must contain specific allegations of fact and law. It is further

ORDERED that Green Acres Estates' opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty

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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 Green Acres Estates, 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 if the utility fails to timely respond to the show cause, the penalties of \$2,500 and \$1,518 shall be imposed without further action by this Commission. It is further

ORDERED that if reasonable collection efforts are unsuccessful, the collection of the fines shall be forwarded to the Comptroller's office and the docket shall be closed. It is further

ORDERED that if the utility responds to the show cause by remitting the penalty, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 3rd day of September, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

LAJ

by: Kay Flynn
Chief, Bureau of Records