

MEMORANDUM

January 5, 1998

RECEIVED

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11:40  
FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (FERGUSON) *FF*

RE: DOCKET NO. 971585-WU - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST LINADALE WATER COMPANY IN MARION COUNTY FOR VIOLATION OF FULE 25-30.110(3), F.A.C., ANNUAL REPORT.

*98-0019-FOF*

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Attached is an ORDER TO SHOW CAUSE, to be issued in the above-referenced docket.

(Number of pages in order - 6)

CF/lw

Attachment

cc: Division of Water and Wastewater (Dewberry)

I:971585or.cf

*1 Cont*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Linadale Water Company in Marion County for violation of Rule 25-30.110(3), F.A.C., Annual Report.

DOCKET NO. 971585-WU  
ORDER NO. PSC-98-0019-PCO-WU  
ISSUED: January 5, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
DIANE K. KIESLING  
JOE GARCIA

ORDER TO SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

Linadale Water Company (Linadale or utility) is a Class C water utility operating in Marion County. Linadale provides water service to 224 customers. In its 1995 annual report, the utility reported water operating revenues of \$36,552 and operating expenses of \$15,300, resulting in net operating income of \$21,252.

The utility has neither filed its 1996 annual report with the Commission, nor requested an extension to file its 1996 annual report. By letter dated July 28, 1997, our staff notified the utility that the Commission had not received its annual report for 1996, and that if the annual report was not received by August 15, 1997, the matter would be referred to the Division of Legal Services.

On November 4, 1997, our staff contacted the utility's manager, Mr. Rick Walton, and the owner Ms. Fannie J. Shields, regarding the annual report. Our staff followed up with a letter dated November 12, 1997, asking the utility to file the annual report by November 19, 1997. Since then, our staff has left

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several detailed messages with staff of the utility regarding the filing of the annual report.

Our staff again tried to contact both Mr. Walton and Ms. Shields once November 19, 1997 passed without the annual report being filed with the Commission. Our staff informed Mr. Walton's office on November 24, 1997, that because the utility refused to respond, the Division of Legal Services will recommend that the Commission initiate a show cause proceeding and recommend further penalties in excess of the daily rate.

This Order addresses the utility's failure to file its 1996 annual report.

#### 1996 ANNUAL REPORT

Rule 25-30.110, Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Requests for extension of time must be in writing and must be filed before March 31. One extension of 30 days is automatically granted. A further extension 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 Administrative Code, for Class C utilities is \$3.00 per day. We have calculated the penalty for this utility based on the number of days elapsed between the date the annual report was due, March 31, 1997 and December 16, 1997, the date of the agenda conference addressing this matter. We note that the penalty will still accrue until the utility files its annual report.

As stated in the background, by letters dated July 28, 1997 and November 12, 1997, our staff notified Linadale that since it had not filed its 1996 annual report, it was in apparent violation of Rule 25-30.110, Florida Administrative Code. The utility was directed to file a report by November 19, 1997 and pay the

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outstanding penalty assessed for failure to file the 1996 annual report.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to timely file its annual report, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

In consideration of the foregoing, Linadale is ordered to show cause within 20 days why it should not remit a penalty in the amount of \$780 (260 days x \$3.00 per day) for violation of Rule 25-30.110, Florida Administrative Code, by failing to timely file its 1996 annual report. Linadale shall immediately file its 1996 annual report and is hereby put on notice that further violations of Rule 25-30.110, Florida Administrative Code, will result in further action by the Commission.

#### RESPONSE TO SHOW CAUSE ORDER AND CLOSING THE DOCKET

Linadale's response to the show cause order must contain specific allegations of fact and law. Should Linadale file a timely written response that raises material questions of fact and requests a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings shall be scheduled before a final determination on this matter is made. If the utility responds timely but does not request a hearing, our staff will prepare and present a recommendation to us regarding the disposition of the show cause, and this docket shall not be closed. If the utility responds to the show cause order by filing the annual report and remitting the penalties, this docket shall be closed administratively.

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A failure to file a timely written response to the show cause order will constitute an admission of the facts herein alleged and a waiver of the right to a hearing. In the event Linadale fails to file a timely response to the show cause order, the penalty is deemed assessed pursuant to Rule 25-30.110, Florida Administrative Code, with no further action required by the Commission.

We direct the collection of penalties to the Comptroller's office for further collection efforts if Linadale fails to respond to reasonable collection efforts by our staff. Reasonable collection efforts shall consist of two certified letters requesting payment. The referral to the Comptroller's office would be based on the conclusion that further collection efforts by our staff would not be cost effective. After referral to the Comptroller's office, the docket shall be closed.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that Linadale Water Company is ordered to show cause within 20 days why it should not remit a penalty in the amount of \$780 for violation of Rule 25-30.110, Florida Administrative Code, by failing to timely file its 1996 annual report. It is further

ORDERED that Linadale Water Company shall immediately file its 1996 annual report and is hereby put on notice that further violations of Rule 25-30.110, Florida Administrative Code, will result in further action by the Commission. It is further

ORDERED that any response to the order to show cause filed by Linadale Water Company shall contain specific allegations of fact and law. It is further

ORDERED that any response to the order to show cause shall be filed with the Director of the Division of Records and Reporting within 20 days of this Order. It is further

ORDERED that upon receipt of Linadale Water Company's response to the Order to show cause, and upon its request for a hearing, further proceedings will be scheduled by the Commission, at which time Linadale Water Company will have the opportunity to contest the allegations in the body of this Order. It is further

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ORDERED that if Linadale Water Company fails to file a timely response to the order to show cause, such failure 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 reasonable collection efforts are unsuccessful, the collection of penalties and interest shall be forwarded to the Comptroller's office and the docket shall be closed. It is further

ORDERED that if Linadale Water Company responds to the show cause order by remitting the penalty, this docket shall be closed administratively. It is further

ORDERED that any payment of penalties shall be forwarded to the Comptroller's office for deposit in the State General Revenue Fund.

By ORDER of the Florida Public Service Commission this  
5th day of January, 1998.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

CF

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 25, 1998.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.