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MEMORANDUM

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TO: DIVISION OF RECORDS AND REPORTING

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

RE: DOCKET NO. 980098-WU - Initiation of show cause proceedings against Manatee Utilities, Inc., in Levy County for failure to file 1995 and 1996 annual reports in accordance with Rule 25-30.110(3), F.A.C., and failure to remit regulatory assessment fees for 1995 and 1996 in accordance with Rule 25-30.120, F.A.C.

98-0334-5C-WU

Attached is an ORDER TO SHOW CAUSE AND REQUIRING IMMEDIATE FILING OF ANNUAL REPORTS, PAYMENT OF REGULATORY ASSESSMENT FEES, AND ALL ASSOCIATED PENALTIES AND INTEREST, to be issued in the above-referenced docket.

(Number of pages in order - 8)

CF/lw

Attachment

cc: Division of Water and Wastewater (Dewberry, Gilchrist)  
Division of Administration (Sewell, Lake)

I:980098or.cf

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Manatee Utilities, Inc., in Levy County for failure to file 1995 and 1996 annual reports in accordance with Rule 25-30.110(3), F.A.C., and failure to remit regulatory assessment fees for 1995 and 1996 in accordance with Rule 25-30.120, F.A.C.

DOCKET NO. 980098-WU  
ORDER NO. PSC-98-0334-SC-WU  
ISSUED: February 27, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE AND  
REQUIRING IMMEDIATE FILING OF ANNUAL REPORTS,  
PAYMENT OF REGULATORY ASSESSMENT FEES, AND  
ALL ASSOCIATED PENALTIES AND INTEREST

BY THE COMMISSION:

BACKGROUND

Manatee Utilities, Inc., (Manatee or utility) is a Class C water utility that serves approximately 50 customers in Chiefland County Estates in Levy County. The utility operated under Certificate No. 411-W since December 9, 1983. According to the utility's 1994 annual report, the utility had total gross revenues of \$6,207 with a net operating loss of \$6,934.

In Order No. PSC-95-0222-FOF-WU, issued February 17, 1995, in Docket No. 941122-WU, the Commission acknowledged the abandonment of the utility by its owner, James E. Bennett, and the appointment

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FPSC-REGUL. STAFF REPORTING

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of Frank E. Woodward as receiver. On July 3, 1996, Mr. Woodward noticed the Commission of his intent to abandon Manatee.

The Commission acknowledged Mr. Woodward's abandonment effective September 1, 1996, in Order No. PSC-96-1186-FOF-WU, issued September 20, 1996. Levy County has been operating the utility since that time through an independent contractor. Pursuant to Section 367.022(2), Florida Statutes, the utility is exempt under the operation of the county. Therefore, by Order No. PSC-97-1545-FOF-WU, issued December 9, 1997, the Commission canceled Manatee's certificate, Certificate No. 411-W. In that Order, the Commission noted that Mr. Woodward had neither filed the annual reports for 1995 and 1996, nor remitted the regulatory assessment fees for the same period. This Order addresses these issues.

#### 1995 AND 1996 ANNUAL REPORTS

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 based on the number of days elapsed since March 31 and the date of the agenda. The date of the agenda is included in computing the number of days elapsed. We note that the penalty will still accrue until the utility files its annual reports.

By letters dated July 26, 1996, July 28, 1997, November 19, 1997, and December 29, 1997, staff notified Mr. Woodward that since he had not filed the utility's 1995 and 1996 annual reports, he was

in apparent violation of Rule 25-30.110, Florida Administrative Code. The utility was given a final opportunity to file the annual reports by January 19, 1998.

#### SUMMARY AND FINDINGS OF ANNUAL REPORT VIOLATIONS

Pursuant to Section 367.021(12), Florida Statutes, Mr. Woodward, as the former receiver for Manatee, is 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, Mr. Woodward, as former receiver for Manatee, is ordered to show cause, in writing, within 20 days why he should not remit a penalty in the amount of \$2,967 (\$2,040 for 680 days x \$3.00 per day for 1995; and \$927 for 309 days x \$3.00 per day for 1996) for violation of Rule 25-30.110, Florida Administrative Code, by failing to file the utility's annual reports for 1995 and 1996. Mr. Woodward shall immediately file the utility's annual reports for 1995 and 1996, and is hereby on notice that further violations of Rule 25-30.110, Florida Administrative Code, will result in further action by the Commission.

#### 1994 AND 1995 REGULATORY ASSESSMENT FEES

In establishing rates, the Commission includes in its determination of the revenue requirements the utility's obligation to pay regulatory assessment fees. However, this utility has failed to pay regulatory assessment fees since 1994.

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(5)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its regulatory assessment fees, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.
2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% annum.

In addition, pursuant to Sections 367.145(1)(b) and 367.161, Florida Statutes, and Rule 25-30.120(5)(b), Florida Administrative Code, the Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner.

Notices of delinquency for failure to remit regulatory assessment fees were mailed to Mr. Woodward on April 15, 1996, May 30, 1997, and June 10, 1997. Mr. Woodward owes \$576.61 in outstanding regulatory assessment fees up through September 1, 1996. As of February 3, 1998, Mr. Woodward owes \$241.74 (\$144.15 in penalties and \$97.59 in interest) for a total of \$818.35.

We have calculated the penalty and interest based on the number of days elapsed since the respective regulatory assessments were due and the date of the agenda. The date of the agenda is included in computing the amount of time elapsed. We note that penalties and interest continue to accrue until the utility pays the delinquent regulatory assessment fees.

Regulatory assessment fees are intended to cover the costs incurred in our regulation of utilities. Apparently, Mr. Woodward has no inclination to pay the fees voluntarily, nor does it appear that he is making a good faith effort toward payment. As stated previously, Mr. Woodward, as receiver for Manatee, is charged with the knowledge of the Commission's rules and statutes. Thus, the

intentional act of failing to remit regulatory assessment fees would meet the standard for a "willful violation." Accordingly, Mr. Woodward, as former receiver for Manatee, is ordered to show cause, in writing, within 20 days why he should not remit penalties and interest in the amount of \$241.74, for his failure to remit the regulatory assessment fees for 1995 and 1996. Further, Mr. Woodward is ordered to immediately remit a total of \$576.61 in delinquent regulatory assessment fees for 1995 and 1996.

RESPONSE TO ORDER TO SHOW CAUSE AND CLOSING THE DOCKET

Mr. Woodward's response to this Order to Show Cause must contain specific allegations of fact and law. Should Mr. Woodward 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 he responds timely but does not request a hearing, our staff will prepare and present a recommendation to us regarding the disposition of this proceeding, and the Docket shall not be closed. If he responds to this Order by filing the annual reports, remitting the regulatory assessment fees, and all associated penalties and interest, the Docket shall be closed administratively.

A failure to file a timely written response to this Order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing. In the event Mr. Woodward fails to file a timely response to this Order, the penalties and intent are deemed assessed with no further action required by the Commission.

In that event, if Mr. Woodward fails to respond to reasonable collection efforts by our staff, the collection of fees, penalties, and interest shall be referred to the Comptroller's office for further collection efforts. Reasonable collection efforts shall consist of two certified letters requesting payment from the utility. Referral of this matter 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, this docket shall be closed.

Based on the foregoing, it is therefore,

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ORDERED by the Florida Public Service Commission that Mr. Woodward, as former receiver of Manatee Utilities, Inc., shall show cause, in writing, within 20 days why he should not remit a penalty in the amount of \$2,967 for violation of Rule 25-30.110, Florida Administrative Code, by failing to file the annual reports for 1995 and 1996. It is further

ORDERED that Mr. Woodward, as former receiver of Manatee Utilities, Inc., shall immediately file the utility's annual reports for 1995 and 1996. It is further

ORDERED that Mr. Woodward show cause, in writing, within 20 days why he should not remit a penalty in the amount of \$144.15 and interest in the amount of \$97.59 for violations of Rule 25-30.120(5)(b), Florida Administrative Code. It is further

ORDERED by that Mr. Woodward immediately remit \$576.61 in delinquent regulatory assessment fees for 1995 and up through September 1, 1996. It is further

ORDERED that any response to this Order to Show Cause must contain specific allegations of fact and law. It is further

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

ORDERED that in the event that Mr. Woodward 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 final determination is made. It is further It is further

ORDERED that if Mr. Woodward fails to file a timely response to this 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

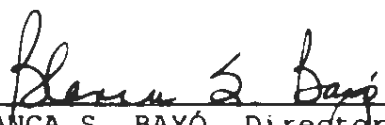
ORDERED that if reasonable collection efforts are unsuccessful, the collection of penalties and interest shall be forwarded to the Comptroller's office and the Docket shall be closed. It is further

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ORDERED that if Mr. Woodward responds to this Order to Show Cause by filing the annual reports, remitting the regulatory assessment fees, penalties, and interest, the 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 27th day of February, 1998.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

CF

NOTICE OF FURTHER PROCEEDINGS OF 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.



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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 March 19, 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.