

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Kincaid Hills Water Company in Alachua County for violation of Rule 25-30.110(3), F.A.C., Records and Reports; Annual Reports.

DOCKET NO. 971623-WU
ORDER NO. PSC-98-0737-SC-WU
ISSUED: May 28, 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 FOR
FAILURE TO TIMELY FILE 1995 AND 1996 ANNUAL REPORTS AND
PAYMENT OF ASSOCIATED PENALTIES

BY THE COMMISSION:

BACKGROUND

Kincaid Hills Water Company (Kincaid Hills or Utility) is a Class C water utility operating in Alachua County. Kincaid Hills provides water service to 318 customers in four subdivisions. In its 1994 annual report, the utility reported water operating revenues of \$41,816 and operating expenses of \$52,579, resulting in net operating loss of \$10,763.

Mr. Berdell Knowles, owner of Kincaid Hills, filed the utility's 1995 annual report on January 20, 1998 and its 1996 annual report on December 2, 1997.

This Order addresses Mr. Knowles' failure to timely file the utility's 1995 and 1996 annual reports.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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 10, 1997 and November 24, 1997, our staff notified Mr. Knowles 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. Mr. Knowles was asked to file both reports by November 19, 1997.

As stated previously, Mr. Knowles filed the 1995 annual report on January 20, 1998 and the 1996 annual report on December 2, 1997. On January 23, 1998 and again on March 12, 1998, our staff contacted Mr. Knowles by telephone regarding payment of penalty fees for his untimely filing of the annual reports. He stated that he should not have to remit the penalties. Our staff explained the statutes and rules governing compliance with Commission procedure and provided Mr. Knowles with several options for payment as well as information on filing a petition for rule waiver. Mr. Knowles rejected each option because he said he didn't have time to "come up to the Commission and ask for a rule waiver." By letters dated March 10, 1998 and March 31, 1998, our staff made a final attempt to collect the penalty fees. Mr. Knowles did not respond to our staff's collection efforts.

SUMMARY AND FINDINGS OF ANNUAL REPORT VIOLATIONS

Pursuant to Section 367.021(12), Florida Statutes, Mr. Knowles 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. Knowles, is ordered to show cause, in writing, within 20 days why he should not remit a penalty in the amount of \$2,628 (\$1,890 for 630 days x \$3.00 per day for 1995; and \$738 for 246 days x \$3.00 per day for 1996) for violation of Rule 25-30.110, Florida Administrative Code, by failing to timely file the utility's annual reports for 1995 and 1996. Mr. Knowles is hereby on notice that further violations of Rule 25-30.110, Florida Administrative Code, will result in further action by the Commission.

RESPONSE TO ORDER TO SHOW CAUSE AND CLOSING THE DOCKET

Mr. Knowles' response to this Order to Show Cause must contain specific allegations of fact and law. Should Mr. Knowles 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 remitting all associated penalties, 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. Knowles fails

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to file a timely response to this Order, the penalties are deemed assessed with no further action required by the Commission.

In that event, if Mr. Knowles fails to respond to reasonable collection efforts by our staff, the collection of the penalties 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,

ORDERED by the Florida Public Service Commission that Mr. Berdell Knowles, owner of Kincaid Hills Water Company, shall show cause, in writing, within 20 days why he should not remit a penalty in the amount of \$2,628 for violation of Rule 25-30.110, Florida Administrative Code, by failing to timely file the annual reports for 1995 and 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. Knowles 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

ORDERED that if Mr. Knowles 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 the penalties shall be forwarded to the Comptroller's office and the Docket shall be closed. It is further

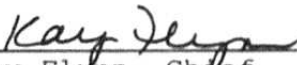
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ORDERED that if Mr. Knowles responds to this Order to Show Cause by remitting the penalties, the Docket shall be closed administratively. It is further

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 28th day of May, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



Kay Flynn, Chief
Bureau of Records

(S E A L)

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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 June 17, 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.