

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Gem Estates Utilities, Inc., in Pasco County for violation of Rule 25-30.110(3), F.A.C., Annual Report, and Rule 25-30.120, F.A.C., Regulatory Assessment Fees.

DOCKET NO. 980678-WU
ORDER NO. PSC-98-0905-SC-WU
ISSUED: July 7, 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

BY THE COMMISSION:

BACKGROUND

Gem Estates Utilities, Inc., (Gem Estates or utility) is a Class C water utility operating in Pasco County. Gem Estates provides water service to 215 customers in a mobile home subdivision in Pasco County. In its 1994 annual report, the utility reported water operating revenues of \$12,152 and operating expenses of \$19,887, resulting in a net loss of \$7,735.

This utility has neither filed its annual reports from 1995-1997 nor remitted regulatory assessment fees (RAFs) for the same period. The utility also owes penalties and interest for 1992 and 1993 for not timely remitting regulatory assessment fees. This Order addresses these issues.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

SHOW CAUSE PROCEEDINGS FOR ANNUAL REPORTS

1995-1997 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 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.

By letters dated July 26, 1996, July 28, 1997, November 26, 1997, January 5, 1998, and May 12, 1998, our staff notified Gem Estates that since it had not filed its annual reports from 1995-1997, it was in apparent violation of Rule 25-30.110, Florida Administrative Code. Our repeated attempts to contact the sole director and president of the utility, Ms. Jacqueline Cahill, were unsuccessful.

Summary and Findings of Annual Report Violations

Pursuant to Section 367.021(12), Florida Statutes, Gem Estates 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, Gem Estates is hereby ordered to show cause, in writing, within 20 days of this order, why it should not remit a penalty in the amount of \$3,888 (\$2,331 for 777 days x \$3 per day for 1995; \$1,326 for 442 days x \$3 for 1996; \$ 231 for 77 days x \$3 for 1997) for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its annual reports from 1995-1997. Gem Estates shall file its annual reports from 1995-1997, 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.

SHOW CAUSE PROCEEDINGS FOR 1995-1997 REGULATORY ASSESSMENT FEES

In establishing rates, the Commission includes in its determination of the revenue requirement the utility's obligation to pay RAFs.

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, we may impose an additional penalty upon a utility for failure to pay RAFs in a timely manner.

Notices of delinquency for failure to remit its RAFs were mailed to the utility on May 23, 1997 and May 12, 1998. To date, the utility has not remitted the fees.

We 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. The Commission may impose lesser or greater penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

Since 1995, this utility has collected the RAFs and not paid them as required by statute. Regulatory assessment fees are intended to cover the costs incurred in Public Service Commission regulation of utilities. Apparently, the utility has no inclination to pay the fees voluntarily, nor does it appear that the utility is making a good faith effort toward payment. As discussed previously, utilities are 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, the utility is hereby ordered to show cause, in writing, within 20 days, why it should not remit a statutory penalty in the amount of \$399.28 (\$139.50 for 1995; \$142.97 for 1996; \$116.81 for 1997) and interest in the amount of \$271.10 (\$156.24 for 1995; \$91.50 for 1996; \$23.36 for 1997) for violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, for failure to remit 1995-1997 RAFs and penalty and interest of \$12.38 for failure to timely remit 1992 and 1993 regulatory assessment fees. Further, Gem Estates is hereby ordered to immediately remit \$1,713.96 in outstanding regulatory assessment fees (\$558 for 1995, \$571.89 for 1996; and \$584.07 for 1997).

RESPONSE TO ORDER TO SHOW CAUSE AND CLOSING THE DOCKET

Gem Estates' response to this Order to Show Cause must contain specific allegations of fact and law. Should Gem Estates 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 this proceeding, and the Docket shall not be closed. If the utility responds to this Order by filing the annual reports, remitting the regulatory

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

In that event, if Gem Estates 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,

ORDERED by the Florida Public Service Commission that Gem Estates Utilities, Inc., shall show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$3,888 for violation of Rule 25-30.110, Florida Administrative Code, by failing to file the annual reports from 1995-1997. It is further

ORDERED that Gem Estates Utilities, Inc., shall immediately file the utility's annual reports from 1995-1997. It is further

ORDERED that Gem Estates Utilities, Inc., show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$399.28 and interest in the amount of \$271.10 as well as \$12.38 in penalties and interest for violations of Rule 25-30.120(5)(b), Florida Administrative Code. It is further

ORDERED by that Gem Estates Utilities, Inc., immediately remit \$1,713.96 in delinquent regulatory assessment fees from 1995-1997. It is further

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

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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 Gem Estates Utilities, Inc., 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

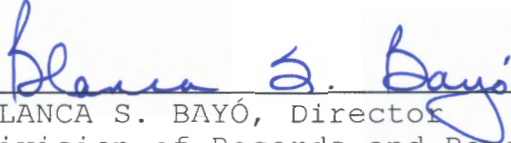
ORDERED that if Gem Estates Utilities, Inc., fails to file a timely response to this Order to Show Cause, such failure shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

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

ORDERED that if Gem Estates Utilities, Inc., 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 7th day of July, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CF/JSB

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 July 27, 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.