

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Disposition of delinquent regulatory assessment fees for Meadows Utility Company, Inc. in Citrus County.

DOCKET NO. 030448-WS
ORDER NO. PSC-03-0874-FOF-WS
ISSUED: July 29, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS;
REFERRING DELINQUENT REGULATORY ASSESSMENT FEES AND ASSOCIATED
PENALTIES AND INTEREST TO THE DEPARTMENT OF FINANCIAL SERVICES;
AND CLOSING THE DOCKET

BY THE COMMISSION:

BACKGROUND

Meadows Utility Company, Inc. (Meadows) is a Class C Water and Wastewater utility located in Citrus County. Meadows was granted a certificate of operation by Order No. PSC-98-0043-FOF-WS, issued January 6, 1998, in Docket No. 951026-WS. By Order No PSC-99-1899-FOF-WS, issued September 24, 1999, in Docket No. 990996-WS, Citrus County rescinded our jurisdiction. Thus, Meadows has not been under our jurisdiction since 1999.

Meadows has failed to pay its regulatory assessment fees (RAFs) for the year of 1999. Pursuant to Rule 25-30.120(2), Florida Administrative Code, the obligation to remit RAFs for any year shall apply to any utility which is subject to this Commission's jurisdiction on or before December 31 of that year.

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PSC-03-0874-FOF-WS CLERK

On November 21, 2002, we contacted Paul LaFord, the utility director, via certified mail regarding the delinquent regulatory assessment fees. We never received a response. On May 12, 2003, we again contacted Mr. LaFord and received no response.

This Order addresses whether Meadows should be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to remit its regulatory assessment fees as required by Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code. We have jurisdiction to pursue collection efforts for the failure to timely pay RAFs pursuant to Sections 367.071, 367.145, and 367.161, Florida Statutes.

SHOW CAUSE ISSUE

Failure to Submit Regulatory Assessment Fees

In establishing rates, we include in our determination of revenue requirements the utility's obligation to pay RAFs. According to the information available, this utility has outstanding RAFs for the year of 1999.

Pursuant to Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each water and wastewater utility shall remit annually RAFs in the amount of 0.045 of its gross operating revenue. Pursuant to Rule 25-30.120(2), Florida Administrative Code, "[t]he obligation to remit the [RAFs] for any year shall apply to any utility which is subject to [the] Commission's jurisdiction on or before December 31 of that year or for any part of that year" Accordingly, Meadows is responsible for RAFs for the year of 1999. In failing to remit the RAFs for this period, Meadows is in apparent violation of the above-referenced statutory and rule provisions.

Furthermore, pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(7), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, 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 percent for each 30 days or fraction thereof, not to exceed a total of 12 percent per annum.

The calculation of the RAFs, plus penalties and interest owed by Meadows for the period indicated above, is set out below. As of July 15, 2003, the amounts due are as follows:

TIME PERIOD	RAF AMOUNT	PENALTY	INTEREST	TOTAL
1999 - WATER	\$295.29	\$73.82	\$118.11	\$487.22
1999 - WASTEWATER	\$478.56	\$119.64	\$191.43	\$789.63
TOTAL DUE				\$1,276.85

Staff Analysis on Whether Show Cause Action Should be Initiated

As indicated above, Meadows is in apparent violation of Sections 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, for failure to submit RAFs.

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 pay RAFs, plus applicable penalties and interest, 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., we 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.

With respect to Meadows failure to remit RAFs and the penalties and interested incurred, we find that the circumstances in this case are such that show cause proceedings should not be initiated. We believe that a show cause proceeding and further collection efforts against Meadows would not be cost effective. We have already made attempts by letters dated November 19, 2001, November 21, 2002, and May 12, 2003, to collect the delinquent RAFs, penalties, and interest due from Meadows. We believe that any further attempts to collect would be futile, because in this situation, the utility is not currently regulated by this Commission.

Accordingly, we find that show cause proceedings shall not be initiated against Meadows for its apparent violation of the aforementioned statutes and Commission rules. Additionally, we shall refer the utility's unpaid RAFs and associated penalties and interest to the Department of Financial Services for permission to write off the accounts as uncollectible.

Based on the foregoing, it is

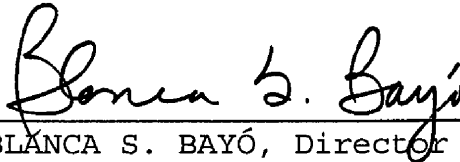
ORDERED by the Florida Public Service Commission that a show cause proceeding shall not be initiated against Meadows Utility Company, Inc. for its failure to submit regulatory assessment fees for year of 1999. It is further

ORDERED that the delinquent regulatory assessment fees and associated penalties and interest shall be referred to the Florida Department of Financial Services, for permission to write off the accounts as uncollectible. It is further

ORDERED that this Docket is hereby closed.

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By ORDER of the Florida Public Service Commission this 29th
Day of July, 2003.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of

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the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.