

BEFORE THE 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, F.A.C., Records and Reports; Annual Reports, and Rule 25-30.120, F.A.C., Regulatory Assessment Fees; Water and Wastewater Utilities.

DOCKET NO. 040248-WU  
ORDER NO. PSC-04-0615-FOF-WU  
ISSUED: June 21, 2004

The following Commissioners participated in the disposition of this matter:

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

ORDER DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS AND APPROVING  
PAYMENT PLAN FOR REGULATORY ASSESSMENT FEES, PENALTIES, AND  
INTEREST

BY THE COMMISSION:

Background

Kincaid Hills Water Company (Kincaid or utility) is a Class C water utility located in Alachua County. Kincaid became subject to Commission jurisdiction and was granted a certificate of operation by Order No. PSC-93-1027-FOF-WU, issued July 13, 1993, Docket No. 921195-WU, In Re: Application for certificate to provide water service in Alachua County under grandfather rights by Kincaid Hills Water Company. In its 2003 annual report, the utility reported water operating revenues of \$42,008, with a net operating loss of \$11,559.00.

Kincaid filed its annual reports for the years 1998-2001 on September 18, 2002, and filed its annual reports for 2002 and 2003 on May 11, 2004. The penalty owed for late filing the 1998-2001 annual reports on September 18, 2002, is \$8,625.00. The penalty owed for late filing the 2002 annual report is \$1,221.00. On March 31, 2004, Kincaid requested a 30 day extension to file its 2003 annual report; thus, the 2003 annual report became past due on April 30, 2004. The penalty owed for late filing the 2003 annual report is \$33.00. Kincaid has a history of failing to file annual reports in a timely manner. In Order No. PSC-98-0737-SC-WU, issued May 28, 1998, Docket No. 971623-WU, 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, Kincaid was ordered to show cause for failure to timely

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file 1995 and 1996 annual reports and payment of associated penalties. Kincaid failed to respond to the show cause order and the docket was closed upon the Office of Comptroller granting the Commission permission to write off uncollected claims totaling \$6,996.12.

In addition, Kincaid has failed to pay regulatory assessment fees (RAFs) for the years 1995-2003. The RAFs, plus associated penalties and interest, owed for the periods indicated are \$29,231.42.

Commission staff learned that the Florida Department of Environmental Protection (DEP) issued a Final Order to Kincaid on April 24, 2003, requiring specific corrective actions to redress the alleged violations of DEP rules and statutes, including bacterial and chemical analyses and physical improvements to the water plant. Kincaid was ordered to pay an \$8,000 fine to DEP in the Final Order. According to DEP staff, Kincaid failed to fully comply with the corrective actions described above or pay the fine. DEP is currently seeking enforcement of the Final Order.

On April 20, 2004, the utility requested Commission approval of a proposed payment plan for its outstanding RAFs and associated penalties and interest. We will address that request below. We will also address whether Kincaid should be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to file annual reports by the dates due as required by Rule 25-30.110(3), Florida Administrative Code, and for failure to remit its regulatory assessment fees (RAFs) as required by Section 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code. We have jurisdiction pursuant to Section 367.145, Florida Statutes, and Section 367.161, Florida Statutes.

#### Regulatory Assessment Fees

In establishing rates, we include in our determination of the revenue requirements the utility's obligation to pay regulatory assessment fees. According to our records, this utility has outstanding RAFs for the years 1995-2003. Pursuant to Section 350.113(3)(e) and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code, each 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, whether or not the utility has actually applied for or been issued a certificate." Accordingly, Kincaid is responsible for RAFs for the time period of 1995-2003. In failing to remit the RAFs for these years, Kincaid 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)(a), 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% 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%.
2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% per annum.

The calculation of the RAFs, plus penalties and interest, owed by Kincaid for the periods indicated above is set out below. As of June 30, 2004, the amounts due are as follows:

Year	Revenues	Regulatory Assessment Fees	Penalty	Interest	Total
1995	\$42,308.00	\$1,903.86	\$475.97	\$1,827.71	\$4,207.53
1996	\$42,705.00	\$1,921.73	\$480.43	\$1,614.25	\$4,016.41
1997	\$41,886.00	\$1,884.87	\$471.22	\$1,357.11	\$3,713.19
1998	\$41,745.00	\$1,878.53	\$469.63	\$1,127.12	\$3,475.27
1999	\$42,310.00	\$1,903.95	\$475.99	\$913.90	\$3,293.83
2000	\$40,185.00	\$1,808.33	\$452.99	\$651.00	\$2,911.40
2001	\$42,220.00	\$1,899.90	\$474.98	\$455.98	\$2,830.85
2002	\$41,400.00	\$1,863.00	\$465.75	\$223.56	\$2,552.31
2003	\$42,008.00	\$1,890.36	\$283.55	\$56.71	\$2,230.62
				<b>TOTAL DUE</b>	<b>\$29,231.42</b>

As stated above, on April 20, 2004, Kincaid submitted a letter requesting to pay its delinquent RAFs and associated penalties and interest by way of a payment plan. We hereby approve the proposed payment plan. Kincaid's payments for outstanding RAFs and associated penalties and interest will begin with the up-front payment of \$3,000 on June 20, 2004, and all subsequent monthly payments of \$500 should be due to the Commission on the 20th of each month. If the utility fails to make the required monthly installments by the due date of any month, further enforcement of the payment plan will be initiated, such as placement of a lien on the utility's real and personal property. Accordingly, show cause proceedings shall not be

initiated against Kincaid for its apparent violation of the aforementioned statutes and Commission rules.

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Annual Reports

Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to Commission jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Annual reports are considered filed on the day they are postmarked or received by the Commission. According to our records, this utility failed to file its 1998-2003 annual reports in a timely manner. Kincaid was responsible for filing those annual reports in a timely manner, and because it failed to do so, is in apparent violation of Rule 25-30.110(3), Florida Administrative Code.

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, based on the number of calendar days elapsed from March 31, or from an approved extended filing date. Using this \$3 figure and multiplying by the number of days from the time the annual reports were due through the time the annual reports were filed, the total penalty for the late-filed 1998-2003 annual reports is set out below.

Year	Calculation	Amount
1998	1,267 x \$3/day	\$3,801.00
1999	901 x \$3/day	\$2,703.00
2000	536 x \$3/day	\$1,608.00
2001	171 x \$3/day	\$513.00
2002	225 x \$3/day	\$675.00
2003	11 x \$3/day	\$33.00
	<b>TOTAL DUE</b>	<b>\$9,879.00</b>

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, the Commission may, in its discretion, impose greater or lesser penalties for such noncompliance.

We find that the circumstances in this case are such that show cause proceedings shall not be initiated. The utility's annual reports for the years 1998-2003 have now all been filed. The

utility has been cooperative with our staff during the past several months and is making a good faith effort towards bringing itself into regulatory compliance.

Accordingly, show cause proceedings shall not be initiated against Kincaid for its apparent violation of the aforementioned statutes and Commission rules. We exercise our discretion as stated in Rule 25-30.110(6)(c), Florida Administrative Code, by not assessing the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, for delinquent annual reports, for the reasons stated above.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that show cause proceedings shall not be initiated against Kincaid Hills Water Company for violation of Rule 25-30.120, Florida Administrative Code, and Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that Kincaid Hills Water Company shall be permitted to discharge the balance owed of its 1995-2003 regulatory assessment fees, with associated penalties and interest, according to the payment plan described herein. It is further

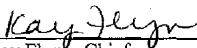
ORDERED that the penalties set against Kincaid Hills Water Company, pursuant to Rule 25-30.110(7), Florida Administrative Code, for delinquent annual reports, shall not be assessed. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 21st day of June, 2004.

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

By:

  
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.

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 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.