

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request for waiver of 2005 annual report
penalty for Ferncrest Utilities, Inc.

DOCKET NO. 060754-WS
ORDER NO. PSC-07-0198-PAA-WS
ISSUED: March 5, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

NOTICE OF PROPOSED AGENCY ACTION
ORDER DECLINING TO IMPOSE PENALTY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

Ferncrest Utilities, Inc. (Ferncrest or utility) is a Class B water and wastewater utility located in Broward County. The utility provides service to 1,556 water and 1,493 wastewater customers. Based on the utility's 2005 Annual Report, Ferncrest reported gross annual revenues of \$626,984 and \$788,822; operating expenses of \$597,601 and \$687,093; and net operating incomes of \$29,383 and \$101,729 for water and wastewater, respectively.

On February 23, 2006, the utility requested a thirty-day extension to file its 2005 Annual Report, which was due on March 31, 2006. Pursuant to Rule 25-30.110(3), Florida Administrative Code (F.A.C.), this request was automatically granted. On April 26, 2006, the utility timely requested an additional extension to file its annual report by May 16, 2006. On April 27, 2006, the request was granted and the due date for the 2005 Annual Report became May 16, 2006.

On July 12, 2006 and August 30, 2006, the Division of Economic Regulation wrote letters to the utility notifying the utility that its 2005 Annual Report was late. These letters stated that pursuant to Rule 25-30.110(6) and (7), F.A.C., the penalty for a Class B utility is \$13.50 per day for each calendar day elapsed from the due date of the annual report to the date of filing.

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FPSC-COMMISSION CLERK

The 2005 Annual Report was finally filed on October 27, 2006, 164 days late. On the same day it filed its 2005 Annual Report, the utility requested by letter that the penalty not be assessed as there was good cause for noncompliance.

This Order addresses Ferncrest's petition for waiver of the 2005 Annual Report penalty. We have jurisdiction pursuant to Section 367.121, Florida Statutes.

Imposition of Penalty Set Out in Rule 25-30.110(7), F.A.C.

As stated above, Ferncrest was granted two extensions of time to file its 2005 Annual Report, but still filed its report 164 days late. Based on Rule 25-30.110(7)(b), F.A.C., the standard penalty for a Class B utility would be \$2,214 (164 days x \$13.50 = \$2,214). The utility indicates that there is good cause for the noncompliance and states that the requested waiver relates solely to the penalties associated with the 2005 Annual Report.

Rule 25-30.110(3), F.A.C., requires utilities subject to our jurisdiction as of December 31st of any year to file an annual report for that year. The report is due by March 31st for the preceding year ending December 31st, but was extended to May 16, 2006, in this case.

In his written request, Dr. Andrew E. Trumbach, the utility's accountant, states the basis for the first two extensions was because he became ill in February 2006, underwent a series of diagnostic tests and therapy, and was primarily out of the office. Dr. Trumbach further explains that he was admitted to the Palms West Hospital and underwent emergency surgery. Lastly, Dr. Trumbach was not able to return to work until October 16, 2006.

Within eleven days after returning to work, Dr. Trumbach reviewed the utility's books, brought the books forward, prepared the 2005 Annual Report, and filed the report. He further explains that the utility has filed its annual reports on a timely basis over the past ten years that he has been employed by Ferncrest. On the same date that he filed Ferncrest's 2005 Annual Report, the utility requested in writing that the standard penalty be waived.

Rule 25-30.110(6)(c), F.A.C., states that a utility shall be subject to the penalties imposed herein unless the utility demonstrates good cause for the noncompliance. Further, we may, in our discretion, impose penalties for noncompliance that are greater or lesser than provided therein. We find that Ferncrest has shown good cause as to why the 2005 Annual Report was not timely filed, and our staff has also verified that the utility has not previously filed an annual report late in the last ten years. Therefore, we find that the standard penalty shall not be imposed and we grant the utility's request that the \$2,214 penalty not be assessed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that because there is good cause for the noncompliance, the penalty for the late-filing of the 2005 Annual Report shall not be imposed. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no protest to the proposed agency action is filed by a substantially affected person within 21 days of this Order, the docket shall be closed upon the issuance of a Consummating Order. It is further

ORDERED that if a timely protest to this Proposed Agency Action Order is filed by a substantially affected person within 21 days of the Order, the docket shall remain open pending the resolution of the protest.

By ORDER of the Florida Public Service Commission this 5th day of March, 2007.

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

By: 

Ann Cole, Chief
Bureau of Records

(S E A L)

RRJ

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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 26, 2007.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.