

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show Cause Proceedings)	DOCKET NO. 890679-WU
against SUNNYLAND UTILITIES, INC.,)	ORDER NO. 21407
in Brevard County for failure to)	ISSUED: 6-19-89
comply with 1987 Annual Report)	
requirements)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Sunnyland Utilities, Inc., ("Sunnyland"), owned a Class C utility providing water service in Brevard County on December 31, 1987. Sunnyland has not timely filed a complete 1987 annual report as required by Rule 25-30.110, Florida Administrative Code. Rule 25-30.110 requires utilities subject to the Commission's jurisdiction as of December 31st each year to file an annual report on or before March 31st of the following year. Requests for extension must be in writing and must be filed before March 31. One extension of 30 days is automatically granted. Longer extensions 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 timely file a 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. The penalty calculation is based on the number of days elapsed since March 31, or the approved extension date and the actual date of filing. The date of filing is included in computing the number of days elapsed. The Commission may, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, impose lesser or greater penalties.

Since September, 1987, the utility has been operated by the South Brevard Water Co-op, Inc., ("Co-op"), a nonprofit corporation made up of utility customers. In April, 1988, the Co-op secured title to the utility facilities and land at a foreclosure sale. On September 6, 1988, the Commission issued Order No. 19936, indicating that the Co-op is exempt from our regulation pursuant to the exemption for non-profit corporations set forth in Section 367.022(7), Florida Statutes. No application for transfer had been filed with this Commission as of December 31, 1987.

Sunnyland Utilities, Inc., has recently completed a Chapter 7 (liquidation) bankruptcy proceeding. Although Sunnyland Utilities, Inc., was involuntarily dissolved as a corporate entity in November, 1987, for nonfiling of its corporate annual report, it has been reinstated. By Order No.

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20127, issued October 6, 1988, the Commission directed Sunnyland to refund certain monies to the customers within 90 days. That order further directed that any portion of the refund not made by Sunnyland within the specified time shall be made by Dennis K. Stewart pursuant to his personal guarantee. No refund has been made and the Commission directed staff to initiate court proceedings to collect the personal guarantee executed by Mr. Stewart so that these monies can be refunded to the customers. In view of Sunnyland's recent bankruptcy litigation, pursuit of a refund from Sunnyland was not considered cost-effective at this time.

Order No. 20459, issued December 15, 1988, assessed a fine against Sunnyland for failing to file its 1986 annual report. We have referred collection of this fine to the Comptroller's office in that further attempts by this Commission to collect the penalty would not be cost effective.

Sunnyland has not filed its 1987 annual report. Sunnyland did not request or receive an extension of time for said filing. On May 19, 1988, a warning letter was sent and received by certified mail. The May 19, 1988 letter directed a response by June 15, 1988. On July 19, 1988, a second warning letter was sent by certified mail, however, it was refused. Sunnyland has not responded to the letters. The value of the annual report is approximately \$2500.

Based on the foregoing, it appears that Sunnyland has failed to comply with the 1987 annual report requirements and is in violation of Rule 25-30.110, Florida Administrative Code. Therefore, we find it appropriate to order Sunnyland to show cause why it should not be fined \$3 per day for each day that its 1987 annual report is delinquent, up to a total of \$2,500. In the event that Sunnyland fails to file a timely response to this show cause order, we authorize Staff to assess the fine pursuant to the above-referenced rule. If Sunnyland fails to respond to reasonable collection efforts by this Commission, we deem the fine to be uncollectible and hereby authorize referral of this matter to the Comptroller's Office for further collection efforts based on this Commission's finding that, under the aforesaid circumstances, further collection efforts by this Commission would not be cost effective. Two certified letters requesting payment shall constitute reasonable collection efforts.

Wherefore, in consideration of the foregoing, it is:

ORDERED by the Florida Public Service Commission that Sunnyland Utilities, Inc., shall show cause, in writing, why it should not be fined at least \$3 per day for each day that its 1987 annual report is delinquent, to a total of \$2,500. It is further

ORDERED that Sunnyland Utilities, Inc.'s written response must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida, 32399-00870, by the close of business on July 10, 1989. It is further

ORDERED that Sunnyland Utilities, Inc.'s response must contain specific allegations of fact and law. It is further

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ORDERED that Sunnyland Utilities, Inc.'s opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission, as required under Rule 25-30.110(6)(c), F.A.C. It is further

ORDERED that a failure to file a timely response to this show cause order 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, in the event that Sunnyland Utilities, Inc., files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, F.S., further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that in the event that Sunnyland Utilities, Inc. fails to file a timely response to this show cause order, Staff is authorized to assess the fine pursuant to Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that if a fine is assessed and Sunnyland Utilities, Inc., does not remit payment after reasonable collection efforts, we deem the fine to be uncollectible and authorize referral to the Comptroller's Office for further disposition.

By ORDER of the Florida Public Service Commission,
this 19th day of JUNE, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

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