

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Show Cause Proceedings against)	DOCKET NO. 890687-WS
WEST VOLUSIA UTILITIES, INC., in Lake)	ORDER NO. 22119
County for Failure to Comply with 1987)	ISSUED: 10-31-89
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 IMPOSING FINE FOR FAILURE
 TO COMPLY WITH 1987 ANNUAL REPORT REQUIREMENTS

BY THE COMMISSION:

Rule 25-30.110, Florida Administrative Code, requires utilities subject to this Commission's jurisdiction as of December 31st each year to timely file an annual report. 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 fines. The fine set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3 per day. The Commission may, pursuant to Rule 25-30.110(6)(d), Florida Administrative Code, impose lesser or greater penalties. West Volusia Utilities, Inc., ("West Volusia" or "utility"), a Class C utility, filed its 1987 annual report on June 27, 1989. The report was due on March 31, 1987.

Order No. 21745, issued August 18, 1989, directed the utility to show cause why it should not be fined \$1 per day, for a total of \$453, for its failure to timely file its annual report. That order directed a written response on or before September 11, 1989 and stated that failure to file a timely written response shall constitute an admission of the facts alleged in the Order and a waiver of any right to a hearing. On September 12, 1989, West Volusia filed a written response to the show cause order. The utility's response requested that the fine be waived and did not request a hearing. We will accept the response, although it was filed one day late.

The utility's response to the show cause order does not dispute the facts stated in the order but, rather, requests waiver of the fine. The overall reason advanced for waiver are

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the utility's allegations that it diligently attempted to obtain the information necessary to complete the annual report in face of the difficulties described in a letter attached to the response. The response further argues that a fine would not establish any prejudicial precedent in that the facts and circumstances of the case are unusual.

The show cause order describes the Commission's efforts to secure a 1987 annual report from West Volusia and the difficulties alleged by the utility in preparing said report. In view of the utility's difficulties, the show cause order proposed a fine of \$1 per day, for a total of \$453, rather than the \$3 per day fine established by Rule 25-330.110(7), Florida Administrative Code, which would total \$1,359.

The letter attached to the utility's response to the show cause order provides somewhat greater detail of the utility's difficulties in preparing the report. However, we do not believe the additional detail provided supports waiver or even a further lowering of the \$1 per day fine. Therefore, we find it appropriate to impose a \$1 per day fine, for a total of \$453, for West Volusia's failure to timely file its 1987 annual report.

WHEREFORE, in consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that West Volusia Utilities, Inc., is hereby assessed a fine of \$453 for failure to timely file its 1987 annual report.

By ORDER of the Florida Public Service Commission
this 31st day of OCTOBER, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DAS

by: Kay Flynn
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 Records and Reporting 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 or sewer 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 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.