

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show ) DOCKET NO. 920616-WU  
cause proceedings against ) ORDER NO. PSC-92-1337-FOF-WU  
WINDSTREAM UTILITIES COMPANY ) ISSUED: 11/18/92  
in Marion County for failure )  
to remit penalty fee for )  
filing delinquent 1989 and )  
1990 annual reports. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

FINAL ORDER FINING WINDSTREAM UTILITIES COMPANY  
FOR LATE FILING OF 1989 ANNUAL REPORT

BY THE COMMISSION:

Windstream Utilities Company (Windstream or utility), is a Class C utility, serving 105 water customers in Marion County. Based on information in the 1990 annual report, the utility reported water system operating revenues of \$31,371 and operating expenses of \$39,588, resulting in a net operating loss of \$8,217.

Windstream filed a delinquent 1989 annual report, in violation of Rule 25-30.110, Florida Administrative Code. Rule 25-30.110, Florida Administrative Code, 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 31st. 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 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. The

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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 impose lesser or greater penalties, pursuant to Rule 25-30.110(6)(c) Florida Administrative Code.

Windstream Utilities Co. responded to the Order to Show Cause issued by this Commission August 11, 1992, Order No. PSC-92-0803-FOF-WU, which ordered the utility to show cause why it should not be fined \$783 for filing a delinquent 1989 annual report. In its letter in response to the Order, the utility asks that the penalty be waived due to extenuating circumstances that caused the filing delay, i.e., this is a small utility and the owner, Ms. Shari Dlouhy, handles all the paperwork; the utility is dependent on outside professional support to prepare the Commission reports; at that same time, the utility was involved in filing two certificate amendments and two transfer applications; Ms. Dlouhy also had major surgery at that time. We do not find that the circumstances cited by the utility are sufficient to warrant a reduction or waiver of the penalty.

In addition, Ms. Dlouhy claimed an error in the calculation of the penalty because the period from the extended deadline date of July 31, 1990, to the date the report was received, March 19, 1991, is 231 days x \$3 or \$693.

We find the utility's calculation of the days lapsed to be correct and, therefore, in consideration of the foregoing, we find it appropriate to order Windstream to remit the fine of \$693 for filing a delinquent 1989 annual report, in violation of Rule 25-30.110, Florida Administrative Code.

If Windstream 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. Reasonable collection efforts shall consist of two certified letters requesting payment. After referral to the Comptroller's office, the docket shall be closed.

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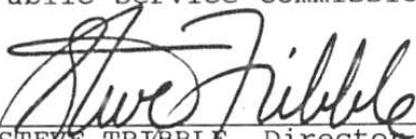
Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Windstream Utilities Company shall pay the fine of \$693 for filing a delinquent 1989 annual report. It is further

ORDERED that if Windstream Utilities Company 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 and this docket shall be closed. It is further

ORDERED that if Windstream Utilities Company does remit payment after reasonable collection efforts, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 18th day of November, 1992.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

KAC

Commissioner Laredo dissented.

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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.