

TALBOTT *WR*

VANDIVER *V*

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

APRIL 25, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (AGARWAL) *AG*
DIVISION OF WATER & WASTEWATER (OKOME) *RO*

RE: DOCKET NO. 960150-WU - BLANTON LAKE UTILITIES COMPANY -
INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST BLANTON LAKE
UTILITIES COMPANY IN PASCO COUNTY FOR FAILURE TO TIMELY
FILE ITS 1993 ANNUAL REPORT
COUNTY: PASCO

AGENDA: MAY 7, 1996 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960150R.RCM

CASE BACKGROUND

Blanton Lake Utility Company (Blanton Lake or Utility) is a Class C utility serving water customers in Pasco County. This utility obtained Water Certificate No. 328-W pursuant to Order No. PSC-92-1301-FOF-WU, issued on November 12, 1992. Based on the information in the 1992 annual report, the utility reported water system operating revenues of \$7,929.00 and operating expenses of \$8,571.00, resulting in a net operating loss of \$862.00.

Sieven Matala (former owner or Matala) owned the Utility during 1993. Mr. Matala then abandoned the Utility in July 1994. The Circuit Court then appointed Pasco County Utility Department (Pasco County) the temporary receiver of Blanton Lake Utility in September 1994.

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The former owner did not timely file the Utility's 1993 annual report, as required by 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. A further extension 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.

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DISCUSSION OF ISSUES

ISSUE 1: Should the former owner of Blanton Lake Utilities, Co., be ordered to show cause why it should not be fined a total of \$33.00 for violation of Rule 25-30.110, Florida Administrative Code, for failure to timely file the Utility's 1993 annual report?

RECOMMENDATION: Yes. The former owner of Blanton Lake Utilities, Inc. should be ordered to show cause in writing within 20 days why he should not be fined a total of \$33 for failure to timely file the Utility's 1993 annual report as required by Rule 25-30.110, Florida Administrative Code. (AGARWAL)

STAFF ANALYSIS: Mr. Steven Matala, the former owner of the Utility, a Class C utility, did not timely file the Utility's 1993 annual report. Mr. Matala never requested an extension with the Commission. The 1993 annual report was filed 11 days late and the appropriate penalty, according to Rule 25-30.110, Florida Administrative Code, is \$33.00.

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 penalty calculation is based on the number of days elapsed since March 31st, 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.

Staff researched the history of the utility and found that Mr. Matala abandoned the Utility in 1994. On June 8, 1994, Mr. Stephen Matala, owner and operator of Blanton Lake, notified the Florida Public Service Commission, the Florida Department of Environmental Protection, the United States Environmental Protection Agency, and the Pasco County Utility Department that he would be abandoning the utility effective July 30, 1994. By Order No. PSC-94-0919-FOF-WU, issued July 26, 1994, the Commission acknowledged Mr. Matala's notice of abandonment.

Pasco County was neither the owner nor operator of the Utility in 1993, and should not be held accountable for the 1993 annual report penalty fees. Pasco County was unable to provide Staff with sufficient information to locate Matala.

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Section 367.071(2), Florida Statutes, states the transferor remains liable for any outstanding regulatory assessment fees, fines, or refunds of the utility. Based on a review of past Commission orders, the Commission has sought the remittance of the fine for failure to file timely annual reports from the former owner when the violation occurred during his ownership. See, Orders Nos. 21446, and PSC-92-0928-FOF-WS, issued June 26, 1989, and September 3, 1992 respectively.

Staff attempted to contact Mr. Matala via the telephone number listed with the Commission. Although the telephone number was in operation, the answering party stated that there was not anyone by the name of Steven Matala at that number.

According to Rule 25-30.110(3), Florida Administrative Code, any utility subject to Commission's jurisdiction as of December 31st of a given year, is responsible for filing the annual report for that year. For these reasons, Staff recommends that the former owner of Blanton Lake, Mr. Matala, be ordered to show cause in writing within 20 days why he should not be fined \$33.00 for failure to timely file its 1993 annual report.

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ISSUE 2: If the Commission approves Issue No. 1 and the utility fails to respond timely to the show cause order, should the penalty of \$33.00 be imposed without further action by this Commission?

RECOMMENDATION: Yes. If the Commission approves Issue No. 1 and the utility fails to respond timely to the show cause order, the penalty of \$33.00 should be imposed without further action by this Commission. (AGARWAL)

STAFF ANALYSIS: The failure of the utility to file a timely response to the show cause order should both constitute an admission of the facts alleged in Issue No. 1 and waive any right to a hearing. Therefore, the penalty of \$33.00 should be imposed with no further action required by the Commission.

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ISSUE 3: If the penalty of \$33.00 is imposed, should this Commission forward the matter to the Comptroller's office if reasonable collection efforts are unsuccessful?

RECOMMENDATION: Yes. If reasonable collection efforts are unsuccessful, the collection of the fines should be forwarded to the Comptroller's office and the docket should be closed. (AGARWAL)

STAFF ANALYSIS: Staff recommends that the Commission's show cause order direct the collection of \$33.00 fine be referred to the Comptroller's office for further collection efforts if the Utility fails to respond to reasonable collection efforts by Commission Staff. Reasonable collection efforts shall consist of two certified letters requesting payment. The referral to the Comptroller's office would be based on the conclusion that further collection efforts by this Commission would not be cost effective.

After referral to the Comptroller's office, the docket should be closed.

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ISSUE 4: If the Commission approves Issue No. 1 and the utility responds to the show cause order by remitting the penalties totalling \$33.00, or by timely responding to the show cause order without remitting the fines should this docket be closed administratively?

RECOMMENDATION: If the Commission approves Issue No. 1 and the utility responds to the show cause order by remitting the penalties totalling \$33.00, this docket should be closed administratively. If the Commission approves Issue No. 1 and the utility responds timely to the show cause order without remitting the fines, this docket should not be closed. (AGARWAL)

STAFF ANALYSIS: If the Commission orders the utility to show cause why it should not be fined for violation of Rule 25-30.110, Florida Administrative Code, and the utility responds to the show cause order by remitting the penalties totalling \$33.00, no further action is required and this docket should be closed administratively. If the utility responds timely to the show cause order without remitting the fines, a recommendation will be presented to the Commission regarding the disposition of this matter. Therefore, this docket should not be closed.