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FLORIDA PUBLIC SERVICE COMMISSION  
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**M E M O R A N D U M**

**FEBRUARY 6, 1997**

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

**FROM: DIVISION OF LEGAL SERVICES (CYRUS-WILLIAMS, VACCARO) *WV***  
**DIVISION OF WATER & WASTEWATER (GILCHRIST, MANN) *GM***

**RE: DOCKET NO. 961141-WU - INITIATION OF SHOW CAUSE  
PROCEEDINGS AGAINST A.P. UTILITIES, INC. FOR VIOLATION OF  
RULE 25-30.110(3), F.A.C., ANNUAL REPORTS AND RULE 25-  
30.120, F.A.C., REGULATORY ASSESSMENT FEES**  
**COUNTY: MARION**

**AGENDA: FEBRUARY 18, 1997 - REGULAR AGENDA - INTERESTED PERSONS  
MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\961141.RCM**

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DOCUMENT NUMBER-DATE

01386 FEB-06

FPSC-RECORDS/REPORTING

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### CASE BACKGROUND

A.P. Utilities, Inc. (APU or utility) is a Class B water utility operating in Marion County. APU provides water service to 1,090 customers in twelve subdivisions. In its 1993 annual report (the last report filed by the utility), the utility reported water operating revenues of \$202,378 and operating expenses of \$149,173, resulting in net operating income of \$453,205.

By Order No. 21762, issued August 21, 1989 in Docket No. 881603, this Commission granted a transfer of Certificate No. 380-W from North Central Florida Utilities, Inc. (NCFU) to APU. On November 30, 1990, Philip Woods purchased APU from Michael Blake, and by Order No. 24977, issued August 26, 1991 in Docket No. 910117, this Commission approved the transfer of majority control. The purchase also included the Aqua Pure Water Company (Aqua Pure) and Marico Properties, Inc. (Marico). By Order No. 25063, issued September 13, 1991 in Docket No. 910119, this Commission approved the transfer of assets from Marico to APU, and by Order No. 25075, issued September 17, 1991 in Docket No. 910118, this Commission approved the transfer of assets from Aqua Pure to APU.

Since the transfer of ownership of APU to Philip Woods, the utility has failed to correct deficiencies in its 1993 annual report, failed to file its 1994 and 1995 reports, and failed to pay its regulatory assessment fees for each of the years 1991 through 1995. On May 17, 1996, staff received a letter from Mr. Woods dated May 13, 1996 in which he stated that he is working to correct the problems. Mr. Woods stated that he was working with the accounting firm of Crippen, Crippen & Company to correct the annual report filing problems by June 30, 1996. He also stated that he hoped to sell the utility by the last quarter of 1996. To date, the utility has not corrected the annual report filing delinquencies or remitted the corresponding penalties. The utility also has not remitted the delinquent regulatory assessment fees and the corresponding penalties. Staff has been notified that Mr. Woods is still attempting to sell the utility.

By letter dated January 9, 1997, staff notified Mr. Woods that because of his continued delinquency in failing to file annual reports and remit regulatory assessment fees, this docket was opened to initiate show cause proceedings against the utility. Mr. Woods was directed to immediately file the delinquent annual reports, remit the delinquent regulatory assessment fees, and remit the appropriate penalties. To date, Mr. Woods has failed to respond to this letter.



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Staff has previously delayed recommending that the utility be show caused in an effort to provide the utility with the opportunity to comply. However, staff now believes that the utility has had ample opportunities for compliance. Accordingly, this recommendation addresses the utility's failure to file its annual reports and remit its regulatory assessment fees.

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should APU be ordered to show cause why it should not be fined in the amount of \$24,232.50 for failing to comply with Rule 25-30.110, Florida Administrative Code, in that it has not filed its 1995 and 1994 annual reports, or corrected deficiencies in its 1993 annual report?

**RECOMMENDATION:** Yes. Staff recommends that APU should be ordered to show cause within 20 days why it should not be fined \$24,232.50 for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its 1994 and 1995 annual reports, and for failing to correct deficiencies in its 1993 annual report. The show cause order should incorporate the conditions stated herein. (CYRUS-WILLIAMS, VACCARO, GILCHRIST, MANN)

**STAFF ANALYSIS:** Rule 25-30.110, Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31 of each year to file an annual report on or before March 31 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. 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.

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 B utilities is \$13.50 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 impose lesser or greater penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

By letter dated June 6, 1994, staff notified APU that since it had not filed its 1993 annual report, it was in apparent violation of Rule 25-30.110, Florida Administrative Code. The utility was directed to file a report by June 30, 1994. The utility filed its 1993 report on June 13, 1994. However, by letter dated July 27, 1994, staff notified the utility of several deficiencies which were to be corrected by August 30, 1994. No further response was received from the utility with regard to these deficiencies, which currently remain uncorrected. As of the date of this agenda conference, February 18, 1997, the utility's fine for the



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delinquent 1993 report is \$12,190.50 (903 days x \$13.50 per day), pursuant to Rule 25-30.110(6), Florida Administrative Code. The fine has not been remitted to the Commission.

With regard to 1994 annual report, on March 16, 1995, this Commission received a request from Crippen, Crippen, and Company, Certified Public Accountants, on behalf of APU, for a thirty-day extension to file the utility's 1994 annual report. The request was granted by letter dated March 17, 1995, and the report became due on April 30, 1995. On May 1, 1995, this Commission received an additional request from the utility's accounting firm to file the utility's 1994 report. The company explained that since Mr. Woods was busy as a full-time engineer, as well as the sole manager and operator of the utility company, he had been unable to supply the company with the information necessary to prepare the 1994 report, and to amend the 1993 report. The request was granted by letter dated May 9, 1995. The letter explained that no further extensions would be granted, and that the report was now due on July 31, 1995. However, the utility failed to meet this filing deadline, and the 1994 annual report currently remains outstanding. As of the date of this agenda conference, February 18, 1997, the utility's fine for the delinquent 1994 report is \$7,668 (568 days x \$13.50 per day), pursuant to Rule 25-30.110(6), Florida Administrative Code. The fine has not been remitted to the Commission.

The utility also failed to file a 1995 annual report, and no requests for extensions were received. As of the date of this agenda conference, February 18, 1997, the utility's fine for the delinquent 1995 report is \$4,374 (324 days x \$13.50 per day), pursuant to Rule 25-30.110(6), Florida Administrative Code. The fine has not been remitted to the Commission.

The utility has had previous violations, in addition to those addressed in this recommendation, including penalties of \$1,229 paid by the utility for failing to timely correct deficiencies in its 1992 annual report filing. Also, the Department of Environmental Protection (DEP) has given the utility a number of extensions regarding noncompliance. Currently, the utility's Hawk's Point system is not in compliance, and if the utility failed to respond by February 5, 1997, DEP was scheduled to initiate action against the utility. The utility's history of violations began when Mr. Woods became owner of the utility.

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such

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as the utility's failure to file its annual report, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

In consideration of the foregoing, staff recommends that APU be ordered to show cause within 20 days why it should not be fined \$24,232.50 for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its 1994 and 1995 annual reports, and for failing to correct deficiencies in its 1993 annual report.

The show cause order should incorporate the following conditions. APU's response to the show cause order must contain specific allegations of fact and law. A failure to file a timely written response to the show cause order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing. Should APU file a timely written response that raises material questions of fact and request a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings shall be scheduled before a final determination on this matter is made.



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**ISSUE 2:** Should APU be ordered to show cause within 20 days why it should not be fined in the amount of \$25,934.89 for violation of Section 350.113, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, in that it failed to pay regulatory assessment fees for each of the years 1991 through 1995?

**RECOMMENDATION:** Yes. Staff recommends that APU should be ordered to show cause within 20 days why it should not be fined in the amount of \$25,934.89 for violation of Section 350.113, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, in that it failed to pay regulatory assessment fees for each of the years 1991 through 1995. The show cause order should incorporate the conditions stated herein. (CYRUS-WILLIAMS, VACCARO, GILCHRIST, MANN)

**STAFF ANALYSIS:** In its establishment of rates, the Commission includes in its determination of the revenue requirements the utility's obligation to pay regulatory assessment fees. In that way, the utility is authorized to collect the amount of regulatory assessment fees it must pay. This utility has failed to pay regulatory assessment fees since it came under Mr. Woods' ownership.

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(5)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its regulatory assessment fees, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.
2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% annum.

In addition, pursuant to Sections 367.145(1)(b) and 367.161, Florida Statutes, and Rule 25-30.120(5)(b), Florida Administrative Code, the Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner.

Notices of delinquency for failure to pay its regulatory assessment fees were mailed to the utility on April 29, 1992, August 12, 1992, September 9, 1993, May 3, 1994, December 7, 1994, September 29, 1995, January 12, 1996, and April 15, 1996. The

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utility failed to respond to each of these notices. As of February 1997, the utility owes the following:

<u>YEAR</u>	<u>RAF AMOUNT</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1991	\$ 7,522.29	\$ 1,880.57	\$ 4,438.15	\$13,841.01
1992	8,667.59	2,166.90	4,073.77	14,908.26
1993	9,107.01	2,276.75	3,187.45	14,571.21
1994	9,340.15	2,335.04	2,148.23	13,823.42
1995	<u>9,522.32</u>	<u>2,380.57</u>	<u>1,047.46</u>	<u>12,950.35</u>
	\$44,159.36	\$11,039.83	\$14,895.06	\$70,094.25

This utility has historically collected the regulatory assessment fees and not paid them as required by statute. Regulatory assessment fees are intended to defray the costs incurred in Public Service Commission regulation of utilities. Apparently, the utility has no inclination to pay the fees voluntarily, nor does it appear that the utility is making a good faith effort toward payment. As discussed in Issue 1 of this recommendation, utilities are charged with the knowledge of the Commission's rules and statutes. Thus, the intentional act of failing to remit regulatory assessment fees would meet the standard for a "willful violation." Accordingly, staff recommends that the utility be ordered to show cause why it should not be fined for its failure to pay regulatory assessment fees for each of the years 1991 through 1995.

The show cause order should incorporate the following conditions. APU's response to the show cause order must contain specific allegations of fact and law. A failure to file a timely written response to the show cause order shall constitute an admission of the facts herein alleged, and a waiver of the right to a hearing. Should APU file a timely written response that raises material questions of fact and request a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings shall be scheduled before a final determination on this matter is made.



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**ISSUE 3:** If the Commission approves Issues 1 and 2 and the utility fails to respond timely to the show cause, should the penalty of \$35,272.33 and interest of \$14,895.06 be imposed without further action by this Commission?

**RECOMMENDATION:** Yes. If the Commission approves Issues 1 and 2 and the utility fails to respond timely to the show cause, the penalty of \$35,272.33 and interest of \$14,895.06 should be imposed without further action by this Commission. (CYRUS-WILLIAMS, VACCARO)

**STAFF ANALYSIS:** The failure of the utility to file a timely response to the show cause order shall both constitute an admission of the facts alleged to Issues 1 and 2 and waive any right to a hearing. Therefore, if no timely response is received from the utility, the penalty of \$35,272.33 should be imposed with no further action required by the Commission. The penalty consists of \$24,232.50 for the utility's failure to file its annual reports, and \$11,039.83 for failure to pay the regulatory assessment fees. The interest on the regulatory assessment fees in the amount of \$14,895.06 should also be imposed with no further action required by the Commission.

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**ISSUE 4:** If the statutory penalty of \$35,272.33 and statutory interest of \$14,895.06 are 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 statutory penalty of \$35,272.33 and statutory interest of \$14,895.06 should be forwarded to the Comptroller's office and the docket should be closed. Additionally, the collection of the \$44,159.36 in delinquent regulatory assessment fees should also be forwarded to the Comptroller's Office. (CYRUS-WILLIAMS, VACCARO)

**STAFF ANALYSIS:** Staff recommends that the Commission's show cause order direct the collection of \$35,272.33 in penalties and \$14,895.06 in interest to the Comptroller's office for further collection efforts if A.P. Utilities, Inc. 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. Additionally, the Commission's order should also direct the collection of the \$44,159.36 in delinquent regulatory assessment fees to the Comptroller's Office for collection.

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



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**ISSUE 5:** If the Commission approves Issues 1 and 2 and the utility responds timely to the show cause without remitting the fine, should the docket be closed?

**RECOMMENDATION:** No. If the Commission approves Issues 1 and 2 and the utility responds timely to the show cause without remitting the fine, this docket should not be closed. (CYRUS-WILLIAMS, VACCARO)

**STAFF ANALYSIS:** If the utility responds timely, a recommendation will be presented to the Commission regarding the disposition of the show cause. Therefore, this docket should not be closed.