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MEMORANDUM

December 10, 1997

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FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (FERGUSON) *GF*

RE: DOCKET NO. 971076-^{WU}NS - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST A.P. UTILITIES, INC. IN MARION COUNTY FOR VIOLATION OF RULE 25-30.110(3), F.A.C., ANNUAL REPORT, AND RULE 25-30.120, F.A.C., REGULATORY ASSESSMENT FEES.

75C-97-1556-PCD-WU

Attached is an Order to Show Cause, to be issued in the above-referenced docket.

(Number of pages in order - 9)

CF/lw/dr

Attachment

cc: Division of Water and Wastewater (Dewberry, Gilchrist)
Division of Administration (Sewell, Lake)

I:971076or.cf

See 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against A.P. Utilities, Inc. in Marion County for violation of Rule 25-30.110(3), F.A.C., Annual Report, and Rule 25-30.120, F.A.C., Regulatory Assessment Fees.

DOCKET NO. 971076-WU
ORDER NO. PSC-97-1556-PCO-WU
ISSUED: December 11, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER TO SHOW CAUSE AND REQUIRING IMMEDIATE PAYMENT OF
1996 REGULATORY ASSESSMENT FEES

BY THE COMMISSION:

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 1996 annual report, the utility reported water operating revenues of \$244,277 and operating expenses of \$176,413, resulting in net operating income of \$67,864.

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-WU, we approved the transfer of assets from Marico to APU, and by Order No. 25075,

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issued September 17, 1991 in Docket No. 910118-WU, we 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. By Order No. PSC-97-0286-FOF-WU, issued in Docket No. 961141-WU on March 13, 1997, we ordered the utility to show cause in writing within 20 days why it should not be fined for failure to file its 1994 and 1995 reports, for failure to pay its regulatory assessment fees for each of the years 1991 through 1995, and for failure to correct deficiencies in its 1993 annual report. The utility failed to respond to our order, and by that order the utility's failure to respond was deemed an admission of the facts. The delinquent regulatory assessment fees, associated penalties and interest, and penalties associated with delinquent annual reports totaling \$94,326.75, have been referred to the Comptroller's office for collection (regulatory assessment fees: \$44,159.36; penalty: \$11,039.83; interest: \$14,895.06; and penalty for delinquent annual reports: \$24,232.50).

By letter dated August 29, 1997, our staff notified Mr. Woods that because of his continued delinquency in failing to both file the annual report and remit regulatory assessment fees for 1996 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. Our staff followed up with telephone calls and an additional letter dated September 12, 1997. The utility filed its annual reports for 1994, 1995 and 1996 on October 6, 1997. Upon reviewing the annual report, our staff determined that there were a number of deficiencies. Our staff sent a notice of correction to the utility on October 16, 1997. The grace period for correcting deficiencies in the annual report ends November 16, 1997. Currently, our staff is conducting an audit and an investigation of APU for overearnings, which will be addressed in a future docket. Our staff is considering the possibility of recommending that the utility place future regulatory assessment fees in an escrow account. **This Order addresses the utility's untimely filing of its**

1996 annual report and its failure to remit its regulatory assessment fees for 1996.

1996 ANNUAL REPORT

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

By letter dated August 29, 1997 our staff notified APU that since it had not filed its 1996 annual report, it was in apparent violation of Rule 25-30.110, Florida Administrative Code. The utility was directed to file a report by September 8, 1997, and pay the outstanding penalty assessed for failure to file the 1996 annual report. The utility filed the 1996 annual report on October 6, 1997. Upon review, our staff determined that the annual report was deficient. As of the date the 1996 annual report was filed, October 6, 1997, the utility's penalty for the delinquent 1996 report is \$2,551.50 (189 days x \$13.50 per day), pursuant to Rule 25-30.110(6), Florida Administrative Code. The penalty amount has not been remitted to us.

SUMMARY AND FINDINGS OF ANNUAL REPORT VIOLATIONS

Utilities are charged with the knowledge of our 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 as the utility's failure to timely 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., we 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.

Accordingly, we find it appropriate to order APU to show cause in writing within 20 days why it should not remit a penalty in the amount of \$2,551.50 for apparent violations of Rule 25-30.110, Florida Administrative Code. Pursuant to Section 367.161, Florida Statutes, any payment of penalties shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund.

REGULATORY ASSESSMENT FEES

In establishing rates, we include in our determination of the revenue requirements, the utility's obligation to pay regulatory assessment fees. However, this utility has failed to pay regulatory assessment fees since it came under Mr. Woods' ownership. As stated in the background, the outstanding amounts for 1991 through 1995 have been referred to the Comptroller's office for further collection efforts. To date, the utility has paid \$3,260 to a collection agent, of which the Division of Administration has received \$1,630. This amount was applied to the utility's delinquent 1991 regulatory assessment fees. The collection agent retained \$370 as a collection fee. APU is also delinquent in its payment of 1996 regulatory assessment fees.

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 August 29, 1997, and September 12, 1997. The utility failed to respond to each of these notices. As of January 31, 1998, the utility owes the following for 1996: \$10,992.47 in regulatory assessment fees, as well as \$2,748.12 in penalties, and \$1,209.17 in interest for a total of \$14,949.76.

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 our 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 herein, utilities are charged with the knowledge of our statutes and rules. Thus, the intentional act of failing to remit regulatory assessment fees would meet the standard for a "willful violation."

Accordingly, we find it appropriate to order APU to show cause in writing within 20 days why it should not remit a penalty in the amount of \$2,748.12 and interest in the amount of \$1,209.17 for

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apparent violations of Rule 25-30.120(5)(b), Florida Administrative Code. Pursuant to Section 367.161, Florida Statutes, any payment of penalties shall be forwarded to the Comptroller's office for deposit in the State General Revenue Fund.

RESPONSE TO SHOW CAUSE ORDER AND CLOSING OF DOCKET

APU's response to the show cause order must contain specific allegations of fact and law. 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. If the utility responds timely but does not request a hearing, our staff will present a recommendation to us regarding the disposition of the show cause, and this docket should not be closed. If the utility responds to the show cause by remitting the penalties set forth herein, the delinquent regulatory assessment fees and associated penalties and interest, this docket shall be closed administratively.

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. In the event APU fails to file a timely response to the show cause order, the penalty is deemed assessed. Therefore, if no timely response is received from the utility, the penalty, consisting of \$5,299.62 and interest of \$1,209.17, shall be imposed with no further action required by us. The penalty amount consists of \$2,551.50 for the utility's failure to timely file its 1996 annual report and \$2,748.12 for failure to pay the regulatory assessment fees. The interest on the regulatory assessment fees is \$1,209.17. Further, APU shall immediately remit \$10,992.47 in delinquent regulatory assessment fees for 1996.

We direct the collection of fees, penalties, and 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 shall 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 shall be closed.

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Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that A.P. Utilities, Inc., immediately remit \$10,992.47 in delinquent regulatory assessment fees for 1996. It is further

ORDERED that A.P. Utilities shall show cause in writing why it should not remit a penalty in the amount of \$2,551.50 for violation of Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that A.P. Utilities, Inc., shall show cause in writing why it should not remit a penalty in the amount of \$2,748.12 and interest in the amount of \$1,209.17 for violations of Rule 25-30.120(5)(b), Florida Administrative Code. It is further

ORDERED that any response to the order to show cause filed by A.P. Utilities, Inc., shall contain specific allegations of fact and law. It is further

ORDERED that any response to the order to show cause shall be filed with the Director of Division of Records and Reporting within 20 days of this Order. It is further

ORDERED that upon receipt of A.P. Utilities, Inc.'s response to the Order to show cause, and upon its request for a hearing, further proceedings will be scheduled by the Commission, at which time A.P. Utilities, Inc., will have an opportunity to contest the allegations in the body of this Order. It is further

ORDERED that if A.P. Utilities, Inc., fails to file a timely response to the order to show cause, such failure 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 if reasonable collection efforts are unsuccessful, the collection of penalties and interest shall be forwarded to the Comptroller's office and the docket shall be closed. It is further

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ORDERED that if A.P. Utilities responds to the show cause by remitting the penalty, this docket shall be closed administratively. It is further

ORDERED that any payment of penalties shall be forwarded to the Comptroller's office for deposit in the State General Revenue Fund.

By ORDER of the Florida Public Service Commission this 11th day of December, 1997.

/s/ Blanca S. Bayó
BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.

(S E A L)

CF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.


Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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ORDERED that if A.P. Utilities responds to the show cause by remitting the penalty, this docket shall be closed administratively. It is further

ORDERED that any payment of penalties shall be forwarded to the Comptroller's office for deposit in the State General Revenue Fund.

By ORDER of the Florida Public Service Commission this 11th day of December, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 31, 1997.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.