

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

MEMORANDUM

APRIL 30, 1998

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FPSC - Records/Reporting

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

FROM: DIVISION OF LEGAL SERVICES (FERGUSON) *S. J. H.*
DIVISION OF WATER AND WASTEWATER (DEWBERRY) *D. G. B.*

RE: DOCKET NO. 971623-WU - KINCAID WATER COMPANY - INITIATION
OF SHOW CAUSE PROCEEDINGS AGAINST KINCAID WATER COMPANY
FOR VIOLATION OF RULE 25-30.110, FLORIDA ADMINISTRATIVE
CODE, ANNUAL REPORT.

AGENDA: MAY 5, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\971623.RCM

CASE BACKGROUND

Kincaid Hills Water Company (Kincaid Hills or Utility) is a Class C water utility operating in Alachua County. Kincaid Hills provides water service to 318 customers in four subdivisions. In its 1994 annual report, the utility reported water operating revenues of \$41,816 and operating expenses of \$52,579, resulting in net operating loss of \$10,763.

Mr. Berdell Knowles, president of Kincaid Hills, filed the utility's 1995 annual report on January 20, 1998 and its 1996 annual report on December 2, 1997.

This recommendation addresses Mr. Knowles' failure to timely file the utility's 1995 and 1996 annual reports.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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DISCUSSION OF ISSUES

ISSUE 1: Should Mr. Knowles be ordered to show cause why he should not remit a penalty in the amount of \$2,628 for failing to comply with Rule 25-30.110, Florida Administrative Code, in that he did not timely file the utility's 1995 and 1996 annual reports?

RECOMMENDATION: Yes. Staff recommends that Mr. Knowles, president of Kincaid Hills should be ordered to show cause in writing, within 20 days of issuance of the order, why he should not remit a penalty in the amount of \$2,628 (\$1,890 for 630 days x \$3.00 per day for 1995 and \$738 for 246 days x \$3.00 per day for 1996) for violation of Rule 25-30.110, Florida Administrative Code, by failing to timely file the utility's 1995 and 1996 annual reports. The show cause order should incorporate the conditions stated below in the staff analysis. Mr. Knowles should be put on notice that further violations of Rule 25-30.110, Florida Administrative Code, will result in further action by the Commission. (FERGUSON, DEWBERRY)

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 of time 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 C utilities is \$3.00 per day. Staff calculated the penalty based on the number of days elapsed since March 31 through the date the reports were filed. The Commission may impose lesser or greater penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

By letters dated July 26, 1996, July 28, 1997, November 10, 1997 and November 24, 1997, staff notified Mr. Knowles that since

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he had not filed the utility's 1995 and 1996 annual reports, he was in apparent violation of Rule 25-30.110, Florida Administrative Code. Mr. Knowles was asked to file both reports by November 19, 1997.

As stated in the background, Mr. Knowles filed the 1995 annual report on January 20, 1998 and the 1996 annual report on December 2, 1997. On January 23, 1998 and again on March 12, 1998, staff contacted Mr. Knowles by telephone regarding payment of penalty fees for his untimely filing of the annual reports. He stated that he should not have to remit the penalties. Staff explained the statutes and rules governing compliance with Commission procedure and provided Mr. Knowles with several options for payment as well as information on filing a petition for rule waiver. Mr. Knowles rejected each option because he said he didn't have time to "come up to the Commission and ask for a rule waiver." By letters dated March 10, 1998 and March 31, 1998, staff made a final attempt to collect the penalty fees. Mr. Knowles did not respond to staff's collection efforts.

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 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., 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 Mr. Knowles be ordered to show cause in writing, within 20 days why he should not remit a penalty in the amount of \$2,628 for violation of Rule 25-30.110, Florida Administrative Code, by failing to timely file the utility's 1995 and 1996 annual reports. Mr. Knowles should be put on notice that further violations of Rule 25-30.110,

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Florida Administrative Code, will result in further action by the Commission.

Staff recommends that the show cause order incorporate the following conditions: Mr. Knowles' response to the show cause order must contain specific allegations of fact and law. Should Mr. Knowles file a timely written response that raises material questions of fact and makes a request for a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings will be scheduled before a final determination on this matter is made.

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 Mr. Knowles fails to file a timely response to the show cause order, the penalty is deemed assessed with no further action required by the Commission. In that event, if Mr. Knowles fails to respond to reasonable collection efforts by Commission staff, the collection of penalties should be referred to the Comptroller's office for further collection efforts.

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.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: If Mr. Knowles responds to the show cause order by remitting all associated penalties, this docket should be closed administratively. If Mr. Knowles fails to timely respond to the show cause order and fails to respond to Commission staff's reasonable collection efforts, then this matter should be referred to the Comptroller's office for further collection efforts and this docket should be closed administratively. If Mr. Knowles responds to the show cause order and requests a hearing, this docket should remain open for final disposition. (FERGUSON, DEWBERRY)

STAFF ANALYSIS: If Mr. Knowles responds to the show cause order by remitting all associated penalties, staff believes this docket should be closed administratively. If Mr. Knowles fails to timely respond to the show cause order and fails to respond to reasonable collection efforts, then this matter should be referred to the Comptroller's office for further collection efforts and this docket should be closed administratively. If Mr. Knowles responds to the show cause order and requests a hearing, this docket should remain open for final disposition.