

State of 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-

DATE: March 24, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Rodan)
Division of Economic Regulation (Romig)

RE: Docket No. 050100-SU – Initiation of show cause proceedings against S & L Utilities, Inc. for violation of Rule 25-30.110, F.A.C.
County: Marion

AGENDA: 04/05/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050100.RCM.DOC

Case Background

S & L Utilities, Inc. (S & L or utility) is a Class C wastewater utility located in Marion County. S & L became subject to Commission jurisdiction and was granted a certificate of operation by Order No. 11662, on March 3, 1983. S & L had routinely filed its annual reports in a timely manner until 2003, with the exception of the 1998 annual report being filed 6 days late. The 2003 annual report was filed on September 21, 2004. The penalty owed for late filing of the annual report on September 21, 2004, is \$522.00.

This recommendation addresses whether S & L Utilities, Inc. should be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to file annual reports by the dates due as required by Rule 25-30.110(3), Florida Administrative Code.

The Commission has jurisdiction pursuant to Section 367.161, Florida Statutes.

Discussion of Issues

Issue 1: Should S & L be ordered to show cause, in writing, within 21 days, why it should not be fined for failure to file its 2003 annual report by the date due as required by Rule 25-30.110(3), Florida Administrative Code?

Recommendation: No. A show cause proceeding should not be initiated. Staff recommends that the penalties calculated according to Rule 25-30.110(7), Florida Administrative Code, for delinquent annual reports should not be assessed. (RODAN, ROMIG)

Staff Analysis: Rule 25-30.110(3), Florida Administrative Code, requires utilities subject to Commission jurisdiction as of December 31 of each year to file an annual report on or before March 31 of the following year. Annual reports are considered filed on the day they are postmarked or received by the Commission. According to Commission records, this utility failed to file an annual report for the year 2003 in a timely manner. S & L was responsible for filing the annual report in a timely manner, and because it failed to do so, is in apparent violation of Rule 25-30.110(3), Florida Administrative Code.

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, based on the number of calendar days elapsed from March 31, or from an approved extended filing date. Using this \$3 figure and multiplying by the number of days from the time the annual report was due through the time the annual report was filed on September 21, 2004, the penalty for the delinquent 2003 annual report is set out below.

YEAR	CALCULATION	AMOUNT
2003	174 x \$3/day	\$522.00
	TOTAL DUE	\$522.00

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, the Commission may, in its discretion, impose greater or lesser penalties for such noncompliance.

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). Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes. By failing to file its 2003 annual report in a timely manner, the utility's acts were "willful" in the sense intended by Section 367.161, Florida Statutes. In Commission 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.

Staff believes that the circumstances in this case are such that show cause proceedings should not be initiated. The 2003 annual report was delinquent due to the deaths of both the utility's bookkeeper and the subsequent death of the utility's owner, Mr. Charles Fletcher. The surviving spouse, Mrs. Teresa Fletcher, is retaining ownership of the utility, but is ill. By letter dated August 23, 2004, staff learned that a family friend, Mr. Douglas Louden, volunteered to assist Mrs. Fletcher in completing and filing the delinquent 2003 annual report. By letter dated September 20, 2004, Mr. Louden requested that the Commission not impose the penalties for late filing the 2003 annual report.

Accordingly, staff recommends that show cause proceedings not be initiated against S&L for its apparent violation of the aforementioned statutes and Commission rules. Staff also recommends that the Commission exercise its discretion as stated in Rule 25-30.110(6)(c), Florida Administrative Code, and not assess the penalties set forth in Rule 25-30.110(7), Florida Administrative Code, for delinquent annual reports, for the reasons stated above. The utility should be put on notice that it must file annual reports in a timely manner.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, no further action is necessary, and this docket should therefore be closed. (RODAN)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, no further action is necessary, and this docket should therefore be closed.