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JANUARY 22, 1998

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FPSC - Records/Reporting

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

FROM: DIVISION OF LEGAL SERVICES (FERGUSON, CROSBY)
DIVISION OF WATER AND WASTEWATER (DEWBERRY, GILCHRIST)
DIVISION OF ADMINISTRATION (SEWELK, LAKE)

**RE: DOCKET NO. [REDACTED] - MANATEE UTILITIES, INC., -
INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST MANATEE
UTILITIES, INC, IN LEVY 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.**

**AGENDA: FEBRUARY 3, 1998 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE**

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\980098.RCM

CASE BACKGROUND

Manatee Utilities, Inc., (Manatee or utility) was a Class C water utility that served approximately 50 customers in Chiefland County Estates in Levy County. The utility operated under Certificate No. 411-W since December 9, 1983. The utility's 1994 annual report indicated total gross revenues of \$6,207 with a net operating loss of \$6,934. The utility did not file annual reports for either 1995 or 1996.

In Order No. PSC-95-0222-FOF-WU, issued February 17, 1995, in Docket No. 941122-WU, the Commission acknowledged the abandonment of the utility by its owner, James E. Bennett, and the appointment of Frank E. Woodward as receiver. On July 3, 1996, Mr. Woodward noticed the Commission of his intent to abandon Manatee.

The Commission acknowledged Mr. Woodward's abandonment effective September 1, 1996, in Order No. PSC-96-1186-FOF-WU,

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FPSC-REC. RPS/REPORTING

DOCKET NO. 980098-WU
DATE: JANUARY 22, 1998

issued September 20, 1996 Levy County has been operating the utility since that time through an independent contractor. Pursuant to Section 367.022(2), Florida Statutes, the utility is exempt under the operation of the county. Therefore, by Order No. PSC-97-1545-FOF-WU, issued December 9, 1997, the Commission canceled Manatee's certificate, Certificate No. 411-W. In that Order, the Commission noted that Mr. Woodward had neither filed the annual reports for 1995 and 1996, nor remitted the regulatory assessment fees for the same period and stated that these issues would be addressed in another docket. This docket has been opened to address these issues.

DOCKET NO. 980098-WU
DATE: JANUARY 22, 1998

DISCUSSION OF ISSUES

ISSUE 1: Should Mr. Woodward be ordered to show cause why he should not remit a penalty in the amount of \$2,967 for failing to comply with Rule 25-30.110, Florida Administrative Code, in that he did not file the utility's annual reports for 1995 and 1996?

RECOMMENDATION: Yes. Staff recommends that Mr. Woodward, former owner of Manatee, be ordered to show cause, in writing, within 20 days why he should not remit a penalty in the amount of \$2,967 (\$2,040 for 680 days x \$3.00 per day for 1995; \$927 for 309 days x \$3.00 for 1996) for violation of Rule 25-30.110, Florida Administrative Code, by failing to file the utility's annual reports for 1995 and 1996. The show cause order should incorporate the conditions stated below in the staff analysis. Further, Mr. Woodward should immediately file the annual reports for 1995 and 1996, and 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, and the date of this agenda. The date of this agenda is included in computing the number of days elapsed. Staff notes that the penalty will still accrue until the utility files its annual reports. 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 19, 1997, and December 29, 1997, staff notified Mr. Woodward that since he had not filed the utility's 1995 and 1996 annual reports, he was in apparent violation of Rule 25-30.110, Florida Administrative

DOCKET NO. 980098-WU
DATE: JANUARY 22, 1998

in apparent violation of Rule 25-30.110, Florida Administrative Code. The utility was given a final opportunity to file the annual reports by January 19, 1998.

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. Woodward be ordered to show cause, in writing, within 20 days why he should not remit a penalty in the amount of \$2,967 (\$2,040 for 680 days x \$3.00 per day for 1995; and \$927 for 309 days x \$3.00 per day for 1996) for violation of Rule 25-30.110, Florida Administrative Code, by failing to file the utility's annual reports for 1995 and 1996. Mr. Woodward should immediately file the utility's annual report for 1995 and 1996, and should be put on notice that further violations of Rule 25-30.110, Florida Administrative Code, will result in further action by the Commission.

Staff recommends that the show cause order incorporate the following conditions: Mr. Woodward's response to the show cause order must contain specific allegations of fact and law. Should Mr. Woodward 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. Woodward 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. Woodward 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

DOCKET NO. 980098-WU
DATE: JANUARY 22, 1998

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.

DOCKET NO. 980098-WU
DATE: JANUARY 22, 1998

ISSUE 2: Should Mr. Woodward be ordered to show cause within 20 days why he should not remit a statutory penalty in the amount of \$144.15 and interest in the amount of \$97.59, for violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, for failure to pay regulatory assessment fees for 1995 and 1996?

RECOMMENDATION: Yes. Staff recommends that Mr. Woodward, former owner of Manatee, be ordered to show cause, in writing, within 20 days why it should not remit a statutory penalty in the amount of \$144.15 (\$71.19 for 1995 and \$72.96 for 1996) and \$97.59 in interest (\$65.49 for 1995 and \$32.10 for 1996), for violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, for failure to pay regulatory assessment fees in 1995. Further, Mr. Woodward should be ordered to immediately remit \$576.61 in outstanding regulatory assessment fees (\$284.76 for 1995 and \$291.85 in 1996). The show cause order should incorporate the conditions stated below in the staff analysis. (CROSBY, SEWELL, LAKE, GILCHRIST)

STAFF ANALYSIS: In establishing rates, the Commission includes in its determination of the revenue requirements the utility's obligation to pay 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.

DOCKET NO. 980098-WU
DATE: JANUARY 22, 1998

Notices of delinquency for failure to remit the utility's regulatory assessment fees were mailed to the Mr. Woodward on April 15, 1996, May 30, 1997 and June 10, 1997. As of February 3, 1998, Mr. Woodward owes the following: \$576.61 in outstanding regulatory assessment fees as well as \$144.15 in penalties and \$97.59 in interest for a total of \$818.35 for 1995 and 1996.

Staff calculated the penalty and interest based on the number of days elapsed since the respective regulatory assessments were due and the date of this agenda. The date of this agenda is included in computing the amount of time elapsed. Staff notes that penalties and interest will continue to accrue until the utility pays the delinquent regulatory assessment fees. The Commission may impose lesser or greater penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

Regulatory assessment fees are intended to cover the costs incurred in Public Service Commission regulation of utilities. Apparently, Mr. Woodward has no inclination to pay the fees voluntarily, nor does it appear that he 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 Mr. Woodward be ordered to show cause, in writing, why he should not remit penalties and interest in the amounts of \$241.74, for 1995 and 1996 for his failure to remit its regulatory assessment fees. Further, Mr. Woodward should be ordered to immediately remit a total of \$576.61 in delinquent regulatory assessment fees for 1995 and 1996.

Staff recommends that the show cause order incorporate the following conditions: Mr. Woodward's response to the show cause order must contain specific allegations of fact and law. Should Mr. Woodward 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. Woodward 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 Manatee 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

DOCKET NO. 980098-WU
DATE: JANUARY 22, 1998

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.

DOCKET NO. 980098-WU
DATE: JANUARY 22, 1998

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If Mr. Woodward, former owner of Manatee, responds to the show cause order by filing the annual reports, paying regulatory assessment fees, and remitting all associated penalties and interest, this docket should be closed administratively. If Mr. Woodward 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. Woodward responds to the show cause order and requests a hearing, this docket should remain open for final disposition. (FERGUSON, CROSBY)

STAFF ANALYSIS: If Mr. Woodward, former owner of Manatee, responds to the show cause order by filing the annual reports, paying regulatory assessment fees, and remitting all associated penalties and interest, Staff believes that this docket should be closed administratively. If Mr. Woodward fails to timely respond to the show cause order and fails to respond to 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. Woodward responds to the show cause order and requests a hearing, this docket should remain open for final disposition.