

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of Show cause)	DOCKET NO. 900910-WU
proceedings against UTILITY )	ORDER NO. 23847
SYSTEMS, INC. in Citrus County )	ISSUED: 12-10-90
for failure to file 1988 annual )	
report in compliance with )	
Rule 25-30.110, F.A.C. )	
_____ )	

The following Commissioners participated in the disposition of the following matter:

MICHAEL McK. WILSON, Chairman  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 FRANK S. MESSERSMITH

ORDER TO SHOW CAUSE

BY THE COMMISSION:

CASE BACKGROUND

Utility Systems, Inc. (Utility Systems), a Class C utility, has not timely filed a complete 1988 Annual Report. Rule 25-30.110(3), Florida Administrative Code requires water and wastewater utilities subject to the Commission's jurisdiction as of December 31st of each year to file an annual report on or before March 31st of the following year. Requests for extension must be in writing and must be filed before March 31st. One extension of 30 days is granted automatically. Longer extensions 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. Two notices of noncompliance are sent by certified mail to each utility which has not sent in a report.

Pursuant to Rule 25-30.110(6), Florida Administrative Code, any utility that fails to file a timely and complete Annual Report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set forth in Rule 25-30.110(7), Florida Administrative Code, is \$3.00 per day for Class C utilities. The

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Commission has determined that the value of an annual report is \$2,500. The penalty calculation is based on the number of days elapsed from March 31, 1989, or the approved extension date to the actual date of filing or until the maximum fine of \$2,500 is reached. The date of filing is included in computing the number of days elapsed.

Show cause proceedings were initiated against Utility Systems for its failure to file Annual Reports for 1986 and 1987; those proceedings are in various stages of completion. An Annual Report for 1988 was not received.

In April 1990, Docket No. 900312-WU was opened to process an application for the transfer of Certificate 396-W from Utility Systems to Windstream Utilities Company. Additionally, in November of 1987, the Secretary of State's Office involuntarily dissolved Utility Systems, Inc., as a corporation. However, notwithstanding the fact that the corporation was dissolved and notwithstanding the transfer of the system's ownership in 1988, Utility Systems was the certificate holder of record in 1988 and, as such, the corporation and/or its former owner is responsible for filing an Annual Report for 1988.

Utility Systems was twice notified by certified mail of its noncompliance with the annual report filing requirement. The utility was advised that failure to file the report would result in the continued accrual of a fine of \$3.00 per day. The utility continues to be in violation of the filing requirement.

Based on the foregoing, it appears that Utility Systems has failed to comply with the 1988 Annual Report requirements and is in violation of Rule 25-30.110, Florida Administrative Code. Therefore, we find it appropriate to order Utility Systems to show cause why it should not be fined \$3.00 per day for each day that its 1988 Annual Report is delinquent, up to a total of \$2,500. In the event that Utility Systems fails to file a timely response to this show cause order, we authorize staff to assess the fine pursuant to the above-cited rule.

If Utility Systems fails to respond to reasonable collection efforts by this Commission, we deem the fine to be uncollectible and hereby authorize referral of this matter to the Comptroller's Office for further collection efforts based on this Commission's finding that, under the aforesaid circumstances, further collection

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efforts by this Commission would not be cost effective. Two certified letters requesting payment shall constitute reasonable collection efforts. After referral to the Comptroller's Office, this docket shall be closed.

Wherefore, in consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that Utility Systems, Inc., shall show cause, in writing, why it should not be fined \$3 per day for each day that its 1988 Annual Report is delinquent, to a total of \$2,500. It is further

ORDERED that Utility Systems, Inc.'s written response must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida, 32399-0870, by the close of business on December 31, 1990. It is further

ORDERED that Utility Systems, Inc.'s response must contain specific allegations of fact and law. It is further

ORDERED that Utility Systems, Inc.'s opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission, as required under Rule 25-30.110(6)(c), Florida Administrative Code. It is further

ORDERED that a failure to file a timely response to this show cause order 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 in the event that Utility Systems, Inc. files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that in the event Utility Systems, Inc. fails to file a timely response to this show cause order, Staff is authorized to assess the fine pursuant to Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that if a fine is assessed and Utility Systems, Inc. does not remit payment after reasonable collection efforts, we deem

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ORDERED that if a fine is assessed and Utility Systems, Inc. does not remit payment after reasonable collection efforts, we deem the fine to be uncollectible and authorize referral to the Comptroller's Office for further disposition and this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 10th day of DECEMBER, 1990.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MF

by: Kay Hagan  
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida

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Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer 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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.