

STATE OF FLORIDA

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



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission **RECEIVED**

December 4, 1997

DEC 04 1997

FPSC - Records/Reporting

Linadale Water Co.
Ms. Fannie S. Shields, Owner
Mr. Rick Walton, Manager
LU901 S. E. Highway 42
Umatilla, FL 32784

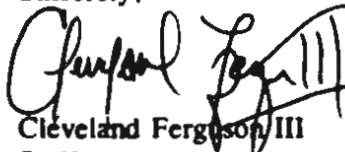
Via: Certified Mail
P 263 572 512

Re: Docket No. 971585-WU - Linadale Water Company - Initiation of Show Cause Proceedings Against Linadale Water Company in Marion County

Dear Ms. Shields and Mr. Walton:

Enclosed is a copy of the Staff Recommendation filed in this matter on December 4, 1997. The Commission is expected to consider this Recommendation at its December 16, 1997, Agenda Conference which will be held in Room 148, Betty Easley Conference Center, 4075 Esplanade Way, in Tallahassee beginning at 9:30 a.m. Due to the number of items to be covered at this conference, we cannot state the exact time at which this item will be heard. You are welcome to come to this Agenda Conference and observe and/or participate in the discussion of this item. If you have any questions, please feel free to call me at (850) 413-6185.

Sincerely,


Cleveland Ferguson III
Staff Attorney

CF/lw

cc: Division of Water and Wastewater (Dewberry)
~~Division of Records and Reporting~~

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TALBOTT
VANDIVER



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

DECEMBER 4, 1997

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DEC 04 1997
11:57
FPSC - Records/Reporting

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

FROM: DIVISION OF LEGAL SERVICES (FERGUSON) 
DIVISION OF WATER AND WASTEWATER (DEWBERRY) 

RE: DOCKET NO. 971585-WU - LINADALE WATER COMPANY -
INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST LINADALE
WATER COMPANY, IN MARION COUNTY FOR VIOLATION OF RULE 25-
30.110(3), F.A.C., ANNUAL REPORT.

COUNTY: MARION

AGENDA: DECEMBER 16, 1997 - REGULAR AGENDA - INTERESTED PERSONS
MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\971585.RCM

CASE BACKGROUND

Linadale Water Company (Linadale or utility) is a Class C water utility operating in Marion County. Linadale provides water service to 224 customers. In its 1995 annual report, the utility reported water operating revenues of \$36,552 and operating expenses of \$15,300, resulting in net operating income of \$21,252.

The utility has neither filed its 1996 annual report with the Commission, nor requested an extension to file its 1996 annual report. By letter dated July 28, 1997, staff notified the utility that the Commission had not received its annual report for 1996, and that if the annual report was not received by August 15, 1997, the matter would be referred to the Division of Legal Services.

DOCKET NO. DATE

12406 DEC-45

FPSC - RECORDS/REPORTING

DOCKET NO. 971585-WU
DATE: DECEMBER 4, 1997

On November 4, 1997, staff contacted the utility's manager, Mr. Rick Walton, and the owner Ms. Fannie J. Shields, regarding the annual report. Staff followed up with a letter dated November 12, 1997, asking the utility to file the annual report by November 19, 1997. Since then, staff has left several detailed messages with staff of the utility regarding the filing of the annual report.

Staff again tried to contact both Mr. Walton and Ms. Shields once November 19, 1997 passed without the annual report being filed with the Commission. Staff informed Mr. Walton's office on November 24, 1997, that because the utility refused to respond, the Division of Legal Services will recommend that the Commission initiate a show cause proceeding and recommend further penalties in excess of the daily rate.

This recommendation addresses the utility's failure to file its 1996 annual report.

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DISCUSSION OF ISSUES

ISSUE 1: Should Linadale be ordered to show cause why it should not remit a penalty in the amount of \$780 (260 days x \$3.00 per day) for failing to comply with Rule 25-30.110, Florida Administrative Code, in that it did not file its 1996 annual report and Docket No. 971585-WU be closed administratively?

RECOMMENDATION: Yes. Staff recommends that Linadale should be ordered to show cause within 20 days why it should not remit a penalty in the amount of \$780 (260 days x \$3.00 per day) for violation of Rule 25-30.110, Florida Administrative Code, by failing to timely file its 1996 annual report. The show cause order should incorporate the conditions stated below in the staff analysis. Linadale should immediately file its 1996 annual report 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.

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As stated in the background, by letters dated July 28, 1997 and November 12, 1997, staff notified Linadale 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 November 19, 1997 and pay the outstanding penalty assessed for failure to file the 1996 annual report.

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 Linadale be ordered to show cause within 20 days why it should not remit a penalty in the amount of \$780 for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its 1996 annual report.

The show cause order should incorporate the following conditions: Linadale's response to the show cause order must contain specific allegations of fact and law. Should Linadale file a timely written response that raises material questions of fact and requests a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings should be scheduled before a final determination on this matter is made. If the utility responds timely but does not request a hearing, a recommendation should be presented to the Commission regarding the disposition of the show cause, and this docket should not be closed. If the utility responds to the show cause order by filing the annual report and remitting the penalties, this docket should be closed administratively.

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A failure to file a timely written response to the show cause order should constitute an admission of the facts herein alleged and a waiver of the right to a hearing. In the event Linadale fails to file a timely response to the show cause order, the penalty is deemed assessed pursuant to Rule 25-30.110, Florida Administrative Code, with no further action required by the Commission. The penalty consists of \$780 for violation of Rule 25-30.110, Florida Administrative Code. Linadale should immediately file its 1996 annual report 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 Commission's show cause order direct the collection of penalties to the Comptroller's office for further collection efforts if Linadale 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 would 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 should be closed.