



# 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:** JUNE 18, 1998

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAKER)

**FROM:** DIVISION OF LEGAL SERVICES (FERGUSON) *CF*  
DIVISION OF WATER AND WASTEWATER (HINES) *AA*

**RE:** DOCKET NO. 980679-WU - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST MOBILE MANOR, INC., IN LEE COUNTY FOR VIOLATION OF RULE 25-30.110(3), F.A.C., ANNUAL REPORT.  
COUNTY: LEE

**AGENDA:** JUNE 30, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\980679.RCM

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RECORDS AND REPORTING

### CASE BACKGROUND

Mobile Manor, Inc., (Mobile Manor or utility) is a Class C water utility operating in Lee County. Mobile Manor provides water service to 315 customers. In its 1995 annual report, the utility reported water operating revenues of \$42,863 and operating expenses of \$55,372, resulting in a net loss of \$12,509.

This utility has not filed its annual reports for 1994, 1996 or 1997. The utility is current with respect to payment of its regulatory assessment fees. This docket addresses these issues.

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**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Mobile Manor be ordered to show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$5,202 for failing to comply with Rule 25-30.110, Florida Administrative Code, in that it did not file its annual reports for 1994, 1996, and 1997?

**RECOMMENDATION:** Yes. Staff recommends that Mobile Manor should be ordered to show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$5,202 (\$3,561 for 1,187 days x \$3.00 per day for 1994; \$1,368 for 456 days x \$3.00 per day for 1996; and \$273 for 91 days x \$3.00 per day for 1997) for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its annual reports for 1994, 1996, and 1997. The show cause order should incorporate the conditions stated below in the staff analysis. Further, Mobile Manor should immediately file the annual reports for 1994, 1996, and 1997, 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, HINES)

**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. The Commission may impose lesser or greater penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

By letters dated April 10, 1995, July 26, 1996, July 16, 1997, July 28, 1997, November 19, 1997, December 27, 1997, January 5, 1998, staff notified Mobile Manor that since it had not filed its annual reports from 1994, 1996, and 1997 it was in apparent violation of Rule 25-30.110, Florida Administrative Code. On

January 5, 1998, staff spoke with Carol Julius, president of Mobile Manor, to determine whether the utility would file the annual reports. She stated that they were working on it and would have them filed by January 7, 1998. The annual reports were not filed. The utility was given a final opportunity to file the annual reports by May 12, 1998. The reports were not filed.

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 Mobile Manor be ordered to show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$5,202 (\$3,561 for 1,187 days x \$3.00 per day for 1994; \$1,368 for 456 days x \$3.00 per day for 1996; and \$273 for 91 days x \$3.00 per day for 1997) for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its annual reports from 1994, 1996, and 1997. Mobile Manor should immediately file its annual reports for 1994, 1996, and 1997, 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: Mobile Manor's response to the show cause order must contain specific allegations of fact and law. Should Mobile Manor 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 Mobile Manor fails to file a timely response to the show cause order, the penalty is deemed assessed with no further action required by the Commission.

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In that event, if Mobile Manor 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.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** If Mobile Manor responds to the show cause order by filing the annual reports and remitting all associated penalties, this docket should be closed administratively. If Mobile Manor 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 Mobile Manor responds to the show cause order and requests a hearing, this docket should remain open for final disposition. (FERGUSON)

**STAFF ANALYSIS:** If Mobile Manor responds to the show cause order by filing the annual reports and remitting all associated penalties, Staff believes that this docket should be closed administratively. If Mobile Manor 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 Mobile Manor responds to the show cause order and requests a hearing, this docket should remain open for final disposition.