



# Public Service Commission

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FPSC - Records/Reporting

**DATE:** JUNE 4, 1998

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

**FROM:** DIVISION OF LEGAL SERVICES (FERGUSON, BRUBAKER)  
DIVISION OF ADMINISTRATION (SEWELL, LAKE)  
DIVISION OF WATER AND WASTEWATER (HINES, T.L. DAVIS)

*Handwritten signatures and initials*

**RE:** DOCKET NO. 980678-WU - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST GEM ESTATES UTILITIES, INC., IN PASCO 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.  
COUNTY: PASCO

**AGENDA:** JUNE 16, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\980678.RCM

### CASE BACKGROUND

Gem Estates Utilities, Inc., (Gem Estates or utility) is a Class C water utility operating in Pasco County. Gem Estates provides water service to 215 customers in a mobile home subdivision in Pasco County. In its 1994 annual report, the utility reported water operating revenues of \$12,152 and operating expenses of \$19,887, resulting in a net loss of \$7,735.

This utility has neither filed its annual reports from 1995-1997 nor remitted regulatory assessment fees for the same period. The utility also owes penalties and interest for 1992 and 1993 for not timely remitting regulatory assessment fees. This docket addresses these issues.

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FPSC-RECORDS/REPORTING

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Gem Estates be ordered to show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$3,888 for failing to comply with Rule 25-30.110, Florida Administrative Code, in that it did not file its annual reports from 1995-1997?

**RECOMMENDATION:** Yes. Staff recommends that Gem Estates should be ordered to show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$3,888 (\$2,331 for 777 days x \$3.00 per day for 1995; \$1,326 for 442 days x \$3.00 for 1996; \$ 231 for 77 days x \$3.00 for 1997) for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its annual reports from 1995-1997. The show cause order should incorporate the conditions stated below in the staff analysis. Further, Gem Estates should immediately file the annual reports from 1995-1997, 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. 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 26, 1997, January 5, 1998, and May 12, 1998, staff notified Gem Estates that since it had not filed its annual reports from 1995-1997, it

was in apparent violation of Rule 25-30.110, Florida Administrative Code. Despite several attempts by Staff to contact the sole director and president of the utility, Ms. Jacqueline Cahill, no response was received from the utility.

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 Gem Estates be ordered to show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$3,888 (\$2,331 for 777 days x \$3.00 per day for 1995; \$1,326 for 442 days x \$3.00 for 1996; \$ 231 for 77 days x \$3.00 for 1997) for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its annual reports from 1995-1997. Gem Estates should immediately file its annual reports from 1995-1997, 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: Gem Estates' response to the show cause order must contain specific allegations of fact and law. Should Gem Estates 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 Gem Estates 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 Gem Estates fails to respond to reasonable collection efforts by Commission staff, the collection of penalties should be referred to the Comptroller's office for further

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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 Gem Estates be ordered to show cause, in writing, within 20 days, why it should not remit a statutory penalty in the amount of \$399.28 and interest in the amount of \$271.10 for violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, for failure to remit regulatory assessment fees for 1995-1997, and penalty and interest of \$12.38 from failure to timely remit 1992 and 1993 regulatory assessment fees?

**RECOMMENDATION:** Yes. Staff recommends that Gem Estates be ordered to show cause, in writing, within 20 days, why it should not remit a statutory penalty in the amount of \$399.28 (\$139.50 for 1995; \$142.97 for 1996; \$116.81 for 1997) and interest in the amount of \$271.10 (\$156.24 for 1995; \$91.50 for 1996; \$23.36 for 1997) for violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, for failure to remit regulatory assessment fees. Staff also recommends that Gem Estates be ordered to show cause, in writing, within 20 days, why it should not remit a statutory penalty and interest of \$12.38 for failure to timely remit 1992 and 1993 regulatory assessment fees. Further, Gem Estates should be ordered to immediately remit \$1,713.96 (\$558 for 1995, \$571.89 for 1996; and \$584.07 for 1997) in regulatory assessment fees. The show cause order should incorporate the conditions stated below in the staff analysis. (FERGUSON, BRUBAKER, SEWELL, LAKE, T.L. DAVIS)

**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.

Notices of delinquency for failure to remit its regulatory assessment fees were mailed to the utility on May 23, 1997 and May 12, 1998. To date, the utility has not remitted the fees.

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.

Since 1995, this utility has collected the regulatory assessment fees and not paid them as required by statute. Regulatory assessment fees are intended to defray the costs incurred in Public Service Commission regulation of utilities. Apparently, the utility has no inclination to pay the fees voluntarily, nor does it appear that the utility 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 the utility be ordered to show cause, in writing, within 20 days why it should not remit a statutory penalty in the amount of \$399.28 (\$139.50 for 1995; \$142.97 for 1996; \$116.81 for 1997) and interest in the amount of \$271.10 (\$156.24 for 1995; \$91.50 for 1996; \$23.36 for 1997) for violation of Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, for failure to remit 1995-1997 regulatory assessment fees and penalty and interest of \$12.38 for failure to timely remit 1992 and 1993 regulatory assessment fees. Further, Gem Estates should be ordered to immediately remit \$1,713.96 in outstanding regulatory assessment fees (\$558 for 1995, \$571.89 for 1996; and \$584.07 for 1997).

Staff recommends that the show cause order incorporate the following conditions: Gem Estates' response to the show cause order must contain specific allegations of fact and law. Should Gem Estates file a timely written response that raises material

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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 Gem Estates 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 Gem Estates 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.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** If Gem Estates 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 Gem Estates 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 Gem Estates responds to the show cause order and requests a hearing, this docket should remain open for final disposition. (FERGUSON, BRUBAKER)

**STAFF ANALYSIS:** If Gem Estates 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 Gem Estates 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 Gem Estates responds to the show cause order and requests a hearing, this docket should remain open for final disposition.