

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against WELLAQUA Co. for violation of Rules 25-30.110, F.A.C., Failure to File Annual Report, 25-30.310, F.A.C., Initiation of Service, 25-30.320, F.A.C., Refusal of Service, 25-30.330, F.A.C., Information to Customers, 25-30.355, F.A.C., Complaints, and 25-30.520, F.A.C., Responsibility of Utility to Provide Service.

DOCKET NO. 990872-WU
ORDER NO. PSC-99-1609-SC-WU
ISSUED: August 17, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

WELLAQUA Co. (WELLAQUA or utility) is a Class C water utility that serves approximately 35 customers in Citrus County. The utility has operated under Certificate No. 513-W since March 28, 1995. By Order No. PSC-95-0421-FOF-WU, issued March 28, 1995, in Docket No. 940340-WU, the Commission approved the transfer of Certificate No. 513-W from Lucky Hills, Inc. to WELLAQUA Co. and established rate base for purposes of the transfer.

Lucky Hills, Inc.'s 1994 annual report indicated total gross revenues of \$11,044 with a net operating loss. However, WELLAQUA has failed to file annual reports for 1995, 1996, 1997, and 1998. WELLAQUA has paid regulatory assessment fees, but since the utility

DOCUMENT NUMBER-DATE

09768 AUG 17 99

PSC-RECORDS/REPORTIN

ORDER NO. PSC-99-1609-SC-WU
DOCKET NO. 990872-WU
PAGE 2

has not filed annual reports for the years listed above, it is not certain that the amounts submitted by the utility for regulatory assessment fees for those years are the correct amounts.

WELLAQUA has also apparently violated several provisions of Rule No. 25-30, Florida Administrative Code, relating to the utility's failure to initiate service to a potential customer and to respond to numerous and repeated inquiries by our staff.

1995 TO 1998 ANNUAL REPORTS

Rule No. 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 No. 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 No. 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3 per day. We have calculated the penalty for each year that the utility has not filed an annual report based on the number of days elapsed since the date the report was due and July 27, 1999, the date of the agenda conference, at which we disposed of this matter and which is included in computing the number of days elapsed. The penalty will continue to accrue until such time as the utility files its annual reports. In addition, we may impose lesser or greater penalties, pursuant to Rule No. 25-30.110(6)(c), Florida Administrative Code.

By letters dated July 28, 1997, November 14, 1997, January 13, 1998, and March 10, 1998, our staff notified Mr. Jerome Salmons, the utility owner, that since he had not filed the utility's 1995 through 1998 annual reports, he was in apparent violation of Rule No. 25-30.110, Florida Administrative Code. Our repeated attempts to contact the utility's owner, Mr. Salmons, were unsuccessful.

Pursuant to Section 367.021(12), Florida Statutes, WELLAQUA is 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 reports, 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 No. 25-14.003, Florida Administrative Code, 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, WELLAQUA is hereby ordered to show cause, in writing, within 21 days of the date of issuance of this Order, why it should not remit a penalty in the amount of \$7,986 (\$3,639 for 1,213 days x \$3.00 per day for 1995; \$2,544 for 848 days x \$3.00 for 1996; \$1,449 for 483 days x \$3.00 per day for 1997; and \$354 for 118 days x \$3.00 per day for 1998) for apparent violation of Rule No. 25-30.110, Florida Administrative Code, by failing to file the utility's annual reports for 1995 through 1998. The utility shall notify this Commission within 21 days of the issuance date of this Order of a reasonable time frame for filing the annual reports for 1995 through 1998. Further, WELLAQUA is hereby put on notice that penalties will continue to accrue until the annual reports are filed, and that further violations of Rule No. 25-30.110, Florida Administrative Code, will result in further action by this Commission.

VIOLATIONS OF MULTIPLE PROVISIONS OF RULE NO. 25-30, FLORIDA
ADMINISTRATIVE CODE

Rule No. 25-30.310, Florida Administrative Code

Mr. Ray Murrin, a potential customer within the utility's certificated territory, has attempted to receive service since March 31, 1999, and to date has not received service. Mr. Murrin contacted our Division of Consumer Affairs in an attempt to receive service. The Division of Consumer Affairs was unsuccessful in its efforts to reach the owner of the utility in order to effectuate the initiation of service. Our staff was informed that the owner

was unwilling to initiate service to Mr. Murrin's residence due to an outstanding bill owed by a prior owner of Mr. Murrin's home.

Section 367.161(1), Florida Statutes, states:

If any utility, by any authorized officer, agent, or employee, knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty for each such offense of not more than \$5,000, to be fixed, imposed, and collected by the commission ... Each day that such refusal or violation continues constitutes a separate offense.

In consideration of the foregoing, the utility's failure to initiate service to Mr. Murrin is an apparent violation of Rule No. 25-30.310(2), Florida Administrative Code, which states: "Upon an applicant's compliance with utility's reasonable rules regarding service initiation, the utility shall initiate service without unreasonable delay." The utility's actions were "willful" in the sense intended by Section 367.161, Florida Statutes. Therefore, the utility is hereby ordered to show cause, in writing within 21 days of the date of issuance of this Order, why it should not be fined up to \$5,000 per day since March 31, 1999, for apparent violation of Rule No. 25-30.310, Florida Administrative Code.

Rule No. 25-30.320, Florida Administrative Code

Pursuant to Rules Nos. 25-30.320(2)(g) and (5)(a), Florida Administrative Code, existence of an outstanding bill from a prior customer of the utility is not a valid reason for the utility to refuse to provide Mr. Murrin with service. Rule No. 25-30.320(5), Florida Administrative Code, states:

The following shall not constitute sufficient cause for refusal ... of service to an applicant or customer: (a) Delinquency in payment for service by a previous occupant of the premises unless the current applicant or customer occupied the premises at the time the delinquency occurred and the previous customer continues to occupy the premises and such previous customer will receive benefit from such service.

The foregoing rule is clear that a prior debt by another occupant is not sufficient cause to refuse service to a new occupant. Mr. Murrin was notified, by telephone, by the utility owner, Mr. Jerome Salmons, as well as the utility's operator, Mr. Ron Annett, that the reason for refusal of service was an outstanding bill from a prior occupant. This action on the part of the utility constitutes an apparent violation of Rule No. 25-30.320(4), Florida Administrative Code, which states: "In case of refusal to establish service ... the utility shall notify the applicant or customer in writing of the reason for such refusal or discontinuance."

The utility's apparent violation of Rule No. 25-30.320, Florida Administrative Code, is a "willful" act in the sense intended by Section 367.161, Florida Statutes. Therefore, the utility is hereby ordered to show cause, in writing within 21 days of the date of issuance of this Order, why it should not be fined up to \$5,000 per day since March 31, 1999, for apparent violation of Rule No. 25-30.320, Florida Administrative Code.

Rule No. 25-30.330, Florida Administrative Code

Rule No. 25-30.330(1)(a), Florida Administrative Code, provides that a utility shall provide its customers, on at least an annual basis, with regular and after hours telephone numbers. Mr. Murrin and several members of the Commission staff have made numerous attempts to reach the utility during and after business hours. The utility owner failed to respond to Mr. Murrin for more than two months when the request for service was first made. The telephone number given by the utility is attached to an answering machine that simply beeps, with no accompanying message or statement identifying that the number is in fact associated with the utility. Several messages have been left by staff, with no response from the utility owner.

The utility's failure to comply with Rule No. 25-30.330, Florida Administrative Code, is a "willful" act in the sense intended by Section 367.161, Florida Statutes. Therefore, the utility is hereby ordered to show cause, in writing within 21 days of the date of issuance of this Order, why it should not be fined up to \$5,000 per day since March 31, 1999, for apparent violation of Rule No. 25-30.330, Florida Administrative Code.

Rule No. 25-30.355, Florida Administrative Code

Rule No. 25-30.355, Florida Administrative Code, requires utilities to respond promptly to complaints and requests posed by customers as well as to inquiries made by the Commission staff. Although Mr. Murrin is not yet a customer, he has been trying to become one for the past several months. Subsection (1) of this rule states: "A utility shall make a full and prompt acknowledgment and investigation of all customer complaints and shall respond fully and promptly to all customer requests."

Additionally, subsection (3) of this rule provides: "Replies to inquiries by the Commission's staff shall be furnished within fifteen (15) days from the date of inquiry and shall be made in writing, if requested." According to Division of Consumer Affairs documentation, on March 31, 1999, the matter was referred to the utility for response. When no response was received, a certified letter followed on May 6, 1999. This letter was returned to the Commission marked "UNCLAIMED" on June 3, 1999. Clearly the utility has failed to comply with the fifteen day response time as specified by the rule. In addition, numerous staff members have tried, unsuccessfully, to contact the utility by telephone.

The utility's failure to respond to Mr. Murrin's requests and inquiries by our staff constitutes an apparent violation of Rule No. 25-30.355, Florida Administrative Code. Therefore, the utility is hereby ordered to show cause, in writing within 21 days of the date of issuance of this Order, why it should not be fined up to \$5,000 per day since March 31, 1999, for apparent violation of Rule No. 25-30.355, Florida Administrative Code.

Rule No. 25-30.520, Florida Administrative Code

Utilities are obligated to provide service to customers in the territory described in the certificate of authorization issued by the Commission. Rule No. 25-30.520, Florida Administrative Code, states: "It is the responsibility of the utility to provide service within its certificated territory in accordance with terms and conditions on file with the Commission." As previously stated, Mr. Murrin contacted the Division of Consumer Affairs on March 31, 1999, stating that he was attempting, unsuccessfully, to receive water service to his home, but that the utility was not returning his calls. Our staff has had no success in receiving a response from the utility or its owner. As of July 27, 1999, the date of

the agenda conference at which we disposed of this matter, the utility had still not provided service to Mr. Murrin.

The utility's failure to provide service to Mr. Murrin, who resides within the utility's certificated territory, constitutes an apparent violation of Rule No. 25-30.520, Florida Administrative Code. Therefore, the utility is hereby ordered to show cause, in writing within 21 days of the date of issuance of this Order, why it should not be fined up to \$5,000 per day since March 31, 1999, for apparent violation of Rule No. 25-30.520, Florida Administrative Code.

RESPONSE TO ORDER TO SHOW CAUSE AND CLOSING DOCKET

WELLAQUA's response to this Order to Show Cause must contain specific allegations of fact and law. Should WELLAQUA file a timely written response to this Order that raises material questions of fact and requests a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings shall be scheduled before a final determination on this matter is made. If the utility responds timely, but does not request a hearing, our staff will prepare and present a recommendation to us regarding the disposition of this proceeding.

A failure to file a timely response to this Order to Show Cause shall constitute a waiver of any right to a hearing, the penalties shall be deemed assessed, and the facts alleged in the body of this Order shall be deemed admitted. We will subsequently address any penalty amounts, any continued failure to initiate service to Mr. Murrin, and any further fines and penalties associated therewith.

In the event WELLAQUA fails to respond to reasonable collection efforts, the collection of fees, penalties, and interest shall be referred to the Comptroller's Office for further collection efforts. Reasonable collection efforts shall consist of two certified letters requesting payment from the utility. Referral of this matter to the Comptroller's Office shall be based upon the conclusion that further collection efforts would not be cost effective. Additionally, any payment of penalties shall be forwarded to the Comptroller's Office for deposit in the State General Revenue Fund.

ORDER NO. PSC-99-1609-SC-WU
DOCKET NO. 990872-WU
PAGE 8

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that WELLAQUA Co. show cause, in writing, within 21 days of the date of issuance of this Order, why it should not remit a penalty in the amount of \$7,986 for apparent violation of Rule No. 25-30.110, Florida Administrative Code, by failing to file its annual reports from 1995 to 1998. It is further

ORDERED that WELLAQUA Co. shall notify this Commission, within 21 days of the date of issuance of this Order, of a reasonable time frame for filing the annual reports for 1995 through 1998. WELLAQUA Co. is hereby put on notice that penalties will continue to accrue until the annual reports are filed. It is further

ORDERED that WELLAQUA Co. show cause, in writing within 21 days of the date of issuance of this Order, why it should not be fined up to \$5,000 per day for each day of apparent violation of Rules Nos. 25-30.310, Florida Administrative Code, Initiation of Service, 25-30.320, Florida Administrative Code, Refusal of Service, 25-30.330, Florida Administrative Code, Information to Customers, 25-30.355, Florida Administrative Code, Complaints, and 25-30.520, Florida Administrative Code, Responsibility of Utility to Provide Service. It is further

ORDERED that WELLAQUA Co. immediately initiate service to Mr. Ray Murrin. It is further

ORDERED that any response to this Order must contain specific allegations of fact and law. It is further

ORDERED that any response to this Order be filed with the Director of the Division of Records and Reporting within 21 days of the date of issuance of this Order. It is further

ORDERED that in the event WELLAQUA Co. files a written response that raises material questions of fact and requests a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings shall be scheduled before a final determination on this matter is made, and this docket shall remain open pending the outcome of the hearing. It is further

ORDERED that if WELLAQUA Co. fails to file a timely response to this Order, such failure shall constitute a waiver of any right to a hearing, the penalties shall be deemed assessed, and the facts

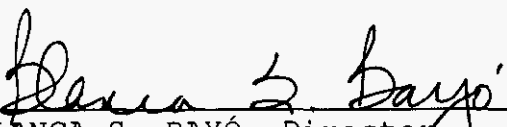
ORDER NO. PSC-99-1609-SC-WU
DOCKET NO. 990872-WU
PAGE 9

alleged in the body of this Order shall be deemed admitted. It is further

ORDERED that if reasonable collection efforts are unsuccessful, the collection of penalties and interest shall be forwarded to the Comptroller's Office for further collection efforts and the docket shall be closed. It is further

ORDERED that any payment of penalties shall be forwarded to the Comptroller's Office for deposit in the State General Revenue Fund.

By ORDER of the Florida Public Service Commission this 17th day of August, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SAC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

ORDER NO. PSC-99-1609-SC-WU
DOCKET NO. 990872-WU
PAGE 10

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 7, 1999.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.