

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 940036-WU
proceedings against SILVER CITY) ORDER NO. PSC-94-1012-FOF-WU
UTILITIES in Marion County for) ISSUED: August 22, 1994
failure to file 1991 annual)
report.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
DIANE K. KIESLING

ORDER IMPOSING FINE

BY THE COMMISSION:

Silver City Utilities (Silver City or utility) is a Class C utility, serving 46 water customers in Marion County. This utility was granted Water Certificate No. 413-W by the Commission in Order No. 13160, issued April 2, 1984. Based on information in its 1993 annual report, the utility reported water operating revenues of \$0 and operating expenses of \$4,249, resulting in a net operating loss of \$4,249.

Silver City has not timely filed its 1991 annual report, as required by Rule 25-30.110, Florida Administrative Code. Rule 25-30.110, Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of December 31 each year to file an annual report on or before March 31 of the following year. Requests for extension 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 per day. The penalty calculation is based on the number of days elapsed since March 31, or the approved extension date, and the actual date of filing. The date of filing is included in computing the number of days elapsed. The Commission may impose lesser or greater

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penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

By Order No. PSC-94-0706-FOF-WU, issued June 8, 1994, the Commission ordered Silver City to show cause, in writing, within twenty days, why it should not be fined \$2,331 for its failure to comply with Rule 25-30.110, Florida Administrative Code. Silver City filed its response to the show cause order by letter dated May 12, 1994. The Commission has since contacted David Small, the utility's manager, and he requested that the letter be the utility's official response to the show cause order. The Commission has acknowledged this letter as the utility's response. An additional letter dated June 28, 1994, responding to the show cause order was also received. These letters offer reasons why the utility should not be fined.

Silver City states that the annual report was not timely filed due to the fact that the accountant who was retained to prepare and file the annual report did not do so. The utility further states that it had no knowledge that the report was not filed timely. Lastly, the utility states that it has have no operating revenue.

The utility attached to its response a letter dated May 15, 1992, requesting 1991 Annual Report forms, as well as an extension to file the 1991 annual report. This same letter included payment of the utility's regulatory assessment fees in the amount of \$25.00. This letter and payment went directly to the Commission's Bureau of Fiscal Services. The Division of Water and Wastewater has no record of the request for the annual report forms and no record of the \$25.00 regulatory assessment fee payment. The letter should have been sent to the Division of Water and Wastewater, pursuant to Rule 25-30.110 (3)(c), Florida Administrative Code. This rule states in part, "A utility may file a written request for an extension of time with the Division of Water and Wastewater no later than March 31."

Although the utility failed to receive the proper forms it requested in May of 1992, the utility could have renewed its request at any time over the last two years, or simply used the blank annual report forms sent to the utility in January 1993. Furthermore, in September 1992, the Commission initiated show cause proceedings for nonpayment of penalty fees for delinquent 1989 and 1990 Annual Reports. The utility could have renewed its request for forms when it paid the penalty fees in October of 1992.

The Commission's rules specifically address this situation. Rule 25-30.110(3)(a), Florida Administrative Code, provides:

(3)(a) The Commission shall, by January 15 of each year, send one blank copy of the appropriate annual report form to each utility company. The failure of a utility to receive a report form shall not excuse the utility from its obligation to timely file the annual report. An original and two copies of the annual reports shall be filed with the Commission on or before March 31 for the preceding year ending December 31. Annual reports are considered filed on the day they were postmarked or received and logged in by the Commission's Division of Water and Wastewater in Tallahassee. (emphasis added)

As the rule clarifies, it is the utility's obligation to make sure that it gets the forms it needs. If no timely response is received to such a request, the utility must simply renew its efforts by letter or more reasonably by a telephone call. To excuse a utility's obligation to timely file its annual report on the basis of it simply sending a request indicating that it has not received the forms would make it practically impossible for the Commission to ever enforce this requirement for timely filing.

With regard to the utility's accountant's faulty work, the utility was put on notice of the accountant's ability when they were show caused for failure to file their 1989 and 1990 annual reports. It is the responsibility of the utility to assure a timely filing of its annual report as stated pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

Regarding the utility's lack of any operating revenues, the Commission spoke with Mr. Small by phone, and he explained that the utility did not charge its customers nor did it intend to charge its customers as an incentive for people to live in the area that the utility serves. Therefore, the utility's lack of operating revenues is by the utility's choice. This in no way relieves the utility's responsibility to pay its fine.

In consideration of the foregoing, Silver City's responses to Order No. PSC-94-0706-FOF-WU fail to show why the utility should not be fined \$2,331. Therefore, Silver City is hereby fined \$2,331 for its failure to file its 1991 annual report.

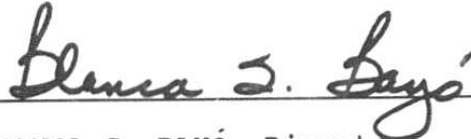
If Silver City fails to respond to reasonable collection efforts by this Commission, we deem the fines to be uncollectible and hereby authorize referral of this matter to the Comptroller's Office for further collection efforts based on this Commission's finding that, under the aforesaid circumstances, further collection efforts would not be cost effective. Reasonable collection efforts shall consist of two certified letters requesting payment.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Silver City Utilities, 355 Princes Street, Kincardine, Ontario N2Z 2T7, is fined \$2,331 for failure to file its 1991 annual report. It is further

ORDERED that if reasonable collection efforts are unsuccessful, the collection of the fines shall be forwarded to the Comptroller's office and the docket shall be closed.

By ORDER of the Florida Public Service Commission, this 22nd day of August, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MSN

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 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

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completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.