



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: JULY 15, 1999

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

FROM: DIVISION OF LEGAL SERVICES (CROSSMAN) *gls*
DIVISION OF WATER AND WASTEWATER (GROOM, WALDEN) *AWG*

RE: DOCKET NO. 990872-WU - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST WELLAQUA CO. FOR VIOLATION OF RULES NOS. 25-30.110, Florida Administrative Code, FAILURE TO FILE ANNUAL REPORT, 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.

AGENDA: 07/27/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990872.RCM

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CASE BACKGROUND

Wellaqua Company (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.

Lucky Hills, Inc.'s 1994 annual report indicated total gross revenues of \$11,044 with a net operating loss. However, the utility did not file annual reports for 1995, 1996, 1997, or 1998. By Order No. PSC-95-0421-FOF-WU, issued March 28, 1995, in Docket No. 940340-WU, the Commission approved the transfer of Certificate

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No. 513-W from Lucky Hills, Inc. to Wellaquia Company and established rate base for purposes of the transfer.

The matter that brings Wellaquia to the forefront now is the inability of a homeowner in the service area, Mr. Ray Murrin, to get service to his home, and the failure of the utility to respond to inquiries by the Commission staff. Service has been provided to this home before, and all that is required is the installation of a meter.

The homeowner has been requesting service to his home since before March 31, 1999, and still has no service from Wellaquia. Mr. Murrin has been in contact with the Commission's Division of Consumer Affairs, which in turn left several messages for the utility, but received no response. Mr Murrin has also contacted Senator Karen Thurman's office regarding this matter. Staff has left numerous messages on the answering machine of the utility owner, and no return phone calls have been received. Staff has only been able to reach the utility's contract operator, Mr. Ron Annett. Through the operator, staff discovered that at least one of the reasons the utility is unwilling to provide service to Mr. Murrin is that there is an outstanding water bill from a prior owner of Mr. Murrin's home. Mr. Murrin has recently been in telephone contact with the utility owner, Mr. Jerome Salmons, and it was at this time Mr. Murrin was informed that there is an outstanding water bill from a prior owner.

In researching the company file at the Commission, staff found the annual report delinquencies mentioned above in addition to the failure to provide service to Mr. Murrin. Regulatory assessment fees are current.

This recommendation addresses whether the utility should be ordered to show cause why it should not be fined for failure to comply with Commission rules.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Wellaqua Company to show cause why it should not be required to remit a penalty in the amount of \$7,986 for apparent failure to comply with Rule No. 25-30.110, Florida Administrative Code, by not filing annual reports for 1995 through 1998?

RECOMMENDATION: Yes. Staff recommends that Wellaqua be ordered to show cause, in writing, within 21 days of the issuance of the 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 show cause order should incorporate the conditions stated below in the staff analysis. Further, Mr. Salmons, the owner of the utility, should notify the 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, and should be put on notice that penalties will continue to accrue until the annual reports are filed. (CROSSMAN, GROOM)

STAFF ANALYSIS: 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 \$3.00 per day. Staff 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 total penalty is \$7,986 calculated as follows:

<u>YEAR</u>	<u># DAYS</u>	<u>PENALTY/DAY</u>	<u>PENALTY AS OF JULY 27, 1999</u>
1995	1,213	\$3.00	\$3,639
1996	848	3.00	2,544
1997	483	3.00	1,449
1998	118	3.00	354
TOTAL PENALTY AS OF JULY 27, 1999			\$7,986

Staff notes that the penalty will continue to accrue until such time as the utility files its annual reports. The Commission 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, staff notified Mr. Salmons 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.

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 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, staff recommends that Wellaqu be ordered to show cause, in writing, within 21 days 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. Staff also recommends that Mr. Salmons, the owner of the utility, should notify the Commission within 21 days of the issuance date of this order of a reasonable time frame for filing the annual reports for

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1995 through 1998. Further, Wellaquia should be put on notice that penalties will continue to accrue until the annual reports are filed.

Staff recommends that the show cause order incorporate the following conditions: The utility's response to the show cause order must contain specific allegations of fact and law. Should the utility 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 the utility 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 the utility 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 the Commission order Wellaqu Company to show cause, in writing within 21 days, as to why it should not be fined up to \$5,000 a 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?

RECOMMENDATION: Yes. Staff recommends that Wellaqu be ordered to show cause, in writing, within 21 days of the issuance of the order why it should not be fined for apparent failure to comply with 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. Additionally, Wellaqu should be ordered to initiate service to Mr. Murrin immediately, provided applicable tariff provisions are met, pending the final resolution of any dispute that may exist in this docket. The utility shall notify the Commission staff within five days after service has been initiated. (CROSSMAN, WALDEN)

STAFF ANALYSIS:

A. Rule No. 25-30.310, Florida Administrative Code

The utility is in 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 intent of this rule is to initiate service expeditiously. Because Mr. Ray Murrin, a potential customer within the utility's certificated territory, has attempted to receive service since March 1999, and still has not received service, the utility has failed to comply with Rule No. 25-30.310, Florida Administrative Code. Mr. Murrin has contacted the Division of Consumer Affairs in his attempt to receive service. Consumer Affairs was unsuccessful, as was Mr. Murrin, in trying to reach the utility owner in order to initiate service. Staff has been informed that the owner is unwilling to initiate service to Mr. Murrin's residence due to an outstanding bill owed by a prior owner of Mr. Murrin's home.

In consideration of the foregoing, staff recommends that Wellaqua be ordered to show cause, in writing, within 21 days why it should not be fined up to \$5,000 a day since March 31, 1999, for failure to comply with Rule No. 25-30.310, Florida Administrative Code. In addition, Wellaqua should be ordered to initiate service to Mr. Murrin immediately, provided applicable tariff provisions are met, pending the final resolution of any dispute that may exist in this docket. The utility shall notify the Commission staff within five days after service is initiated.

B. Rule No. 25-30.320, Florida Administrative Code

Pursuant to Rules Nos. 25-30.320(2) 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.

Staff believes the rule is clear that a prior debt by another occupant is not sufficient cause to refuse service to a new occupant. Staff also believes that Mr. Murrin's request to the utility for initiation of service was adequate and that fees as provided for in the utility's tariff should be paid, by deposit posted, and the utility should connect service to Mr. Murrin's home.

Moreover, Mr. Murrin was notified by telephone conversation with the utility owner, Mr. Jerome Salmons, as well as the utility's operator, Mr. Ron Annett, of the reason, as previously stated, for failure to initiate service. Rule No. 25-30.320(4), Florida Administrative Code, 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."

In consideration of the foregoing, staff recommends that Wellaqua be ordered to show cause, in writing, within 21 days why

it should not be fined up to \$5,000 per day since March 31, 1999, for apparent failure to comply with Rule No. 25-30.320, Florida Administrative Code.

C. 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 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.

Staff was able to obtain from the Tampa office of the Department of Environmental Protection (DEP) the name and phone number of Wellaquas's contract operator. Thus, the only contact staff has had with the utility is through the its operator, Mr. Ron Annett, who maintains that he is not authorized by the utility, through Mr. Salmons, to initiate service for Mr. Murrin. Mr. Annett also stated that he had attempted to contact Mr. Salmons, but reached the same answering machine as staff did.

In consideration of the foregoing, staff recommends that Wellaquas be ordered to show cause, in writing, within 21 days why it should not be fined up to \$5,000 per day since March 31, 1999, for apparent failure to comply with Rule No. 25-30.330, Florida Administrative Code.

D. 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 inquiries made by the Commission's 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 the documents from the Division of Consumer Affairs, 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 members of staff have tried, unsuccessfully, to contact the utility by phone.

In consideration of the foregoing, staff recommends that Wellaqua be ordered to show cause, in writing, within 21 days why it should not be fined up to \$5,000 per day since March 31, 1999, for apparent failure to comply with Rule No. 25-30.355, Florida Administrative Code.

E. 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. Commission staff and Consumer Affairs have had no success in receiving a response from the utility or its owner. As of the date of this recommendation, the utility has still not provided service to Mr. Murrin.

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, Staff recommends that Wellaqua be ordered to show cause, in writing, within 21 days why it should not be fined up to \$5,000 per day since March 31, 1999,

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for apparent failure to comply with Rule No. 25-30.520, Florida
Administrative Code.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending the resolution of the show cause proceeding unless Mr. Salmons responds to the show cause order by filing the annual reports that are delinquent, initiating service to Mr. Murrin, and remitting all associated penalties and interest associated with the numerous apparent rule violations discussed in Issues 1 and 2 of this recommendation. (CROSSMAN)

STAFF ANALYSIS: If Mr. Salmons responds to the show cause order by filing the annual reports that are delinquent, initiating service to Mr. Murrin, and remitting all associated penalties and interest associated with the numerous apparent rule violations discussed in Issues 1 and 2 of this recommendation, this docket should be closed administratively. If Mr. Salmons responds to the show cause order and requests a hearing, this docket should remain open pending final disposition. If Mr. Salmons fails to respond to the show cause order, the penalties should be deemed assessed with no further action required by the Commission and staff will file a subsequent recommendation concerning any resultant continued lack of service to Mr. Murrin.