State of Florida

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: DECEMBER 9, 1999

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

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

RE: DOCKET NO. 990872-WU - 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.

AGENDA: 12/21/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: THIS RECOMMENDATION IS BEING REFILED AT A COMMISSIONER'S REQUEST

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990872R3.RCM

CASE BACKGROUND

Wellaqua Company (Wellaqua or utility) is a Class C water utility that serves approximately 35 customers in Citrus County. The current 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 and established rate base for purposes of the transfer. This system received an original certificate from the Commission on March 27, 1989, which was granted to Lucky Hills, Inc.

Lucky Hills, Inc.'s 1994 annual report indicated total gross revenues of $11,044, showing a net operating loss of $1720.

However, Wellaqua has failed to file annual reports for 1995 through 1998. Wellaqua has paid regulatory assessment fees (RAFs) for 1995 through 1998, but since the utility has not filed annual reports for those years, staff is not certain that the RAFs paid are the correct amounts.

In addition, a potential customer contacted the Commission's Division of Consumer Affairs on March 31, 1999, to request assistance in obtaining service from Wellaqua. Consumer Affairs attempted to reach the utility by phone on April 2, 1999, and April 13, 1999, without success. On May 6, 1999, Consumer Affairs sent a certified letter to Mr. Jerome Salmons, the utility owner, but the letter was returned to the Commission marked "UNCLAIMED". Staff members attempted to reach the utility from April through June, without success. As a result, show cause proceedings were initiated addressing delinquent annual reports and the customer's request for service.

By Order No. PSC-99-1609-SC-WU, issued August 17, 1999, in this docket, the Commission ordered Wellaqua to show cause, in writing, within 21 days of the date of issuance of the Order, why it should not be fined up to $5,000 per day for each day of apparent violation of Rules 25-30.110 (Failure to File Annual Report), 25-30.310 (Initiation of Service), 25-30.320 (Refusal of Service), 25-30.330 (Information to Customers), 25-30.355 (Complaints), and 25-30.520 (Responsibility of Utility to Provide Service), Florida Administrative Code. Wellaqua was also ordered to notify the Commission of a reasonable time frame for filing the annual reports for 1995 through 1998. On August 30, 1999, the utility timely filed its written response to the Show Cause Order.

Staff notes that on July 27, 1999, pursuant to Section 367.171(1), Florida Statutes, the Citrus County Board of County Commissioners voted to rescind Citrus County Resolution No. 73-97, which rendered Citrus County subject to the provisions of Chapter 367, Florida Statutes. By Order No. PSC-99-1899-FOF-WS, issued September 24, 1999, in Docket No. 990996-WS, the Commission acknowledged the resolution adopted by Citrus County that rescinded Commission jurisdiction. Therefore, the Commission no longer has jurisdiction over Wellaqua. However, pursuant to Section 367.171(5), Florida Statutes, this docket should remain open until all pending matters are resolved.

This recommendation addresses whether the Commission should require Wellaqua to remit fines and penalties for apparent violation of several provisions of Chapter 25-30, Florida Administrative Code.

This recommendation was Item No. 36 from the November 30, 1999 Agenda Conference. It is being refiled at a Commissioner's request. Modifications that were approved at the November 30, 1999 Agenda Conference have been added to this recommendation and are highlighted.

DISCUSSION OF ISSUES

ISSUE A: Should the Commission reconsider on its own motion its vote on Item No. 36 from the November 30, 1999 Agenda Conference?

RECOMMENDATION: Yes, at a Commissioner's request, the Commission should reconsider on its own motion its vote on Item No. 36 from the November 30, 1999 Agenda Conference. (CROSSMAN)

STAFF ANALYSIS: Because a Commissioner has requested it, staff recommends that the Commission reconsider on its own motion its vote on this recommendation, which was Item No. 36 from the November 30, 1999 Agenda Conference. At that Agenda, the Commission voted to move staff with modifications added to Issues 1 and 3.

ISSUE 1: In light of the utility's response to the Show Cause Order, should Wellaqua be required to remit a penalty in the amount of $7,986 for apparent violation of Rule 25-30.110, Florida Administrative Code, by failing to file annual reports for 1995 through 1998, and should Wellaqua be required to file the annual reports for 1995 through 1998?

RECOMMENDATION: Wellaqua should be required to remit a penalty in the amount of $7,986 for apparent violation of Rule 25-30.110, Florida Administrative Code, for failure to file annual reports for 1995 through 1998. However, the utility should only be required to submit pages F-3 and V-1, the portion of the annual report that certifies the revenues, for each of these years, instead of submitting full annual reports. The partial annual reports should be submitted within 30 days of the date of issuance of the Order. In the event staff determines that the RAFs paid by the utility for 1995 through 1998 were insufficient, the utility should be required to remit the balance due within 15 days of receipt of written notification of the outstanding balance. RAFs for January through July 27, 1999, the portion of 1999 that the Commission had jurisdiction over Wellaqua, should be remitted on or before March 31, 2000. In the event staff determines that the utility overpaid RAFs, any amount overpaid should be refunded to the utility. (CROSSMAN, GROOM)

STAFF ANALYSIS: Rule 25-30.110(3), 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. Wellaqua has not filed an annual report for any year since the system was transferred to the current owner in 1995. In addition, Wellaqua has never requested an extension of time to file any of the outstanding annual reports and has failed to provide any reasonable explanation for its failure up until this time.

By letters dated July 28, 1997, November 14, 1997, January 13, 1998, and March 10, 1998, staff notified Mr. Jerome Salmons, the utility owner, that he was in apparent violation of Rule 25-30.110, Florida Administrative Code, because he had not filed the utility's annual reports. Repeated attempts to contact the utility during May through July 1999, were also unsuccessful. As a result, show cause proceedings were initiated.

By Order No. PSC-99-1609-SC-WU, issued August 17, 1999, in this docket, the Commission ordered Wellaqua to show cause, in writing, within 21 days of the date of issuance of the Order, why it should not be fined up to $5,000 per day for failure to comply with provisions of Chapter 25-30, Florida Administrative Code.

On August 30, 1999, the utility timely filed its written response to the Show Cause Order. In its response, the utility acknowledges that it has not submitted annual reports, contending that, "We have been in the process of trying to reconstruct our records for over two years." The utility also lists several factors that contributed to its failure to file annual reports for 1995 through 1998. These include: (1) computer storage drive failures; (2) failure of previous owner of the utility to relinquish records of the operations; (3) a catastrophic fire in which nearly all efforts to reconstruct records directed toward establishing a basis for fulfilling the requirements of the 1995 annual report ... were irretrieveably lost; and (4) the death of Jerome C. Salmons, Sr., who, although not the owner of the utility, was the principal force within the company as well as the principal decision maker and one who was helping to prepare, maintain, and reconstruct records.

Also in its response, the utility maintains that efforts would be aided immensely if it could get copies of Lucky Hills Co. annual submissions for two or three years prior to 1995. In addition, the utility requests that staff provide it with those records. The utility has not previously requested from staff, or made a public records request for, copies of Lucky Hills Inc.'s annual reports for the years prior to 1995. If this information was essential in the utility's efforts to complete its annual reports for 1995 through 1998, the utility should have requested it prior to this date. The utility was also ordered to give a reasonable timeframe for filing its delinquent annual reports, but no such timeframe was given in the utility's response. At the utility's request, on September 23, 1999, staff provided Wellaqua with a copy of Lucky Hills' 1993 and 1994 Annual Reports.

Moreover, the utility should have had access to the records discussed above at the time the transfer to the current owner occurred in 1995. Pursuant to Rule 25-30.037(2)(n), Florida Administrative Code, each application for a transfer of certificate of authorization must contain a statement regarding the books and records of the seller. This section states:

> If the books and records of the seller are not available for inspection by the Commission or are not adequate for

purposes of establishing the net book value of the system, a statement by the buyer that a good faith, extensive effort has been made to obtain such books and records for inspection by the Commission and detailing the steps taken to obtain the books and records.

In its application for transfer, Wellaqua indicated that it made reasonable efforts to obtain the books and records of Lucky Hills. Wellaqua also stated that it was relying upon the Commission's rate case order (PSC-93-0741-FOF-WU, issued July 1, 1993, in Docket No. 920961-WU), for the rate base valuation of the system. At the time the transfer application was filed in April 1994, no adjustments had been made to the rate base since it was established in the above order. Additionally, in a letter to the seller of the system, dated March 3, 1994, Wellaqua requested a copy of the federal income tax returns as part of the transfer process. It is not known whether the tax returns were provided by the seller.

By Order No. PSC-95-0421-FOF-WU, issued March 28, 1995, in Docket No. 940340-WU, by proposed agency action, the Commission approved the transfer of Certificate No. 513-W from Lucky Hills, Inc. to Wellaqua. In this Order, the Commission found that, with the exception of the transfer prior to Commission approval, the application was in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules.

Staff does not believe that Wellaqua's response adequately addresses why the utility failed to file annual reports for 1995 through 1998. While factors listed in the utility's response may have provided sufficient justification for an extension of time to file its annual reports, no such request was ever made.

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 forth in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is $3 per day. The Commission may impose lesser or greater penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code. Staff's calculation of the penalty for Wellaqua's failure to file annual reports through July 27, 1999, is $7,986 ($3,639 for 1,213 days x $3.00 per day for 1995; $2,544 for 848 days x $3.00 per day 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). Therefore, staff recommends that Wellaqua be required to pay a penalty of $7,986 for apparent violation of Rule 25-30.110, Florida Administrative Code.

As stated in the case background, on July 27, 1999, the Citrus County Board of County Commissioners voted to rescind Citrus County Resolution No. 73-97, which rendered Citrus County subject to the provisions of Chapter 367, Florida Statutes. By Order No. PSC-99-1899-FOF-WS, issued September 24, 1999, in Docket No. 990996-WS, the Commission acknowledged the resolution adopted by Citrus County that rescinded Commission jurisdiction. Pursuant to Section 367.171(5), Florida Statutes, when a utility becomes subject to regulation by a county, the Commission shall retain jurisdiction over all pending cases before it in which the utility is a party until disposed of in accordance with the law in effect on the day such case was filed by the utility. Therefore, the Commission retains jurisdiction over Wellaqua pending the outcome of this matter.

For the foregoing reasons, staff recommends that Wellaqua should be required to remit a penalty in the amount of $7,986 for apparent violation of Rule 25-30.110, Florida Administrative Code, within 30 days of the date of issuance of the Order. Rule 25-30.110(6)(d) provides:

> Any utility which fails to pay a penalty within 30 days after its assessment by the Commission (the date of issuance of the order) shall be subject to interest applied to the penalty up to and including the date of payment of the penalty. Such interest shall be compounded monthly, based on the 30 day commercial paper rate for high grade, unsecured notes sold through dealers by major corporations in multiples of $1,000 as regularly published in the Wall Street Journal.

If the utility fails to remit the penalty amount listed above, and fails to respond to reasonable collection efforts by Commission staff, the outstanding penalty amount should be referred to the Comptroller's office for further collection efforts. Reasonable collection efforts should consist of two certified letters, sent by the Division of Legal Services, requesting payment of the $7,986 penalty imposed by the Commission. Referral to the Office of the Comptroller would be based upon the conclusion that further collection efforts by this Commission would not be cost effective.

Additionally, although the utility has not filed annual reports for 1995 through 1998, the utility has paid RAFs for those years. However, the Commission uses a utility's annual reports, among other things, to verify that the amount of RAFs paid are correct. Therefore, staff recommends that because the full annual reports are not needed by this Commission on a forward going basis,

other than to verify the appropriate amount of regulatory assessment fees, Wellaqua should only be required to file pages F-3 and V-1 of the annual reports for 1995 through 1998 for the purpose of certifying revenues for each year. This will allow staff to verify the amount of regulatory assessment fees already paid for the years listed above. The partial annual reports should be filed within 30 days of the date of issuance of the Order. In the event staff determines that the RAFs paid by the utility were insufficient, the utility should be required to remit the balance due within 15 days of receipt of written notification of the outstanding balance. In the event staff determines that the utility overpaid RAFs, any amount overpaid will be refunded to the utility. RAFs for January through July 27, 1999, the portion of 1999 that the Commission had jurisdiction over Wellaqua, should be remitted on or before March 31, 2000. If the Commission approves staff's recommendation to not require the utility to file full annual reports for 1995 through 1998, staff will send a letter to Citrus County regarding the Commission's decision in this matter.

ISSUE 2: In light of the utility's response to the Show Cause Order, should Wellaqua Company be required to remit a fine for apparent violation of Rules 25-30.310 (Initiation of Service), 25-30.320 (Refusal or Discontinuance of Service), 25-30.330 (Information to Customers), 25-30.355 (Complaints), and 25-30.520 (Responsibility of Utility to Provide Service), Florida Administrative Code?

RECOMMENDATION: No. Based upon the information contained in utility's response to the Show Cause Order, staff recommends that the utility has apparently violated Rules 25-30.320(4) (Refusal or Discontinuance of Service), and 25-30.355 (Complaints), Florida Administrative Code. However, staff recommends that there is insufficient information to find that the utility apparently violated Rules 25-30.310 (Initiation of Service), 25-30.330 (Information to Customers), 25-30.520 (Responsibility of Utility to Provide Service), Florida Administrative Code. (CROSSMAN, WALDEN)

STAFF ANALYSIS: Mr. Ray Murrin is a homeowner in the Lucky Hills subdivision in Wellaqua's certificated territory. Mr. Murrin has stated that he made several attempts to contact the utility regarding initiation of water service to his property, but was unsuccessful. Mr. Murrin also indicated that he relied on contacting the utility by telephone because he lives out of state.

Although it is not clear when Mr. Murrin's first attempt to contact the utility occurred, Mr. Murrin contacted the Commission's Division of Consumer Affairs on March 31, 1999, to request assistance in getting water service from Wellaqua. Consumer Affairs attempted to reach the utility by phone on April 2, 1999, and April 13, 1999, without success. An answering machine received the calls, but there was no greeting or accompanying message that would indicate the number is in fact associated with the utility. Members of staff also attempted to contact the utility on numerous occasions, but reached the same answering machine. On May 6, 1999, Consumer Affairs sent a certified letter to Mr. Jerome Salmons, Jr., the owner of the utility, in an attempt to follow up on the customer inquiry mailed on March 31, 1999, to which the utility had not responded. The certified letter was returned to the Commission marked "UNCLAIMED".

On June 22, 1999, a staff engineer visited the residence of Mr. Murrin. According to the tenants at the residence, water service was not being provided from the utility. Instead, the only source of water being provided to Mr. Murrin's home was a connection to a private well, which is located on the property of

Mr. Murrin's sister, who lives next door, and was connected to Mr. Murrin's home via a garden hose.

By Order No. PSC-99-1609-SC-WU, on August 17, 1999, in this docket, the Commission ordered Wellaqua to Show Cause why it should not be fined up to $5,000 per day for apparent violation of several provisions of Chapter 25-30, Florida Administrative Code, relating to unreasonable delay in providing service, refusal to provide service based upon a past-due bill of a prior owner, failure to provide regular and after-hours telephone numbers to contact the utility, failure to respond to complaints and requests by Commission staff, and failure to provide service to a customer within the utility's certificated territory. On August 30, 1999, the utility timely filed its written response to this Order.

In its response, the utility stated that a prior owner of Mr. Murrin's residence, who was receiving service from the utility, was notified in writing approximately two years ago that a private well connected to the residence was improper. Apparently, the well remained connected to the residence, and the utility sought assistance from the County health department to have the well disconnected. When the health department was unable to provide assistance, the utility removed the water meter from the residence in order to remove potential backflow into the water system from the private well. At the time the meter was removed, the residence was vacant.

The exact date Mr. Murrin acquired ownership of the residence is not certain. A meter was installed at the residence in late May, 1999; however, according to the utility, service could not be provided at that time due to the damage to the service line on the customer's side of the meter. The utility claims to have notified the real estate property manager that the problem existed. The utility stated that a check valve would need to be installed and the damaged line repaired. The check valve has now been installed and service is being provided to the residence.

Rule 25-30.310 (Initiation of Service), Florida Administrative Code

Rule 25-30.310 (2), Florida Administrative Code, provides: "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 ensure that utilities initiate service expeditiously following a proper request for service.

In its response to the Show Cause Order, the utility lists several reasons as to why service was not provided to Mr. Murrin without unreasonable delay. Specifically, the utility states that Mr. Murrin "would have had no problem at all had he given Wellaqua a properly enunciated phone message or written a letter." The utility states that:

> His initial request was taken as a demand for immediate service for a **Mr. Raymon** (who said to call him immediately as he was leaving town- **but he left no phone number**!). Our helper who took this message did not bother to make a permanent record as she expected an immediate return call. None came while she monitored the phone. A later call came from an **unidentified** source saying, "maybe it would help if I left my phone number". These calls, taken by different people weren't connected until comparing notes much later.

The above statement is evidence only of poor customer service on the part of the utility. The response does not indicate that the utility actually called Mr. Murrin back. The utility owner maintains that he has never even spoken to Mr. Murrin, and, apparently, the utility does not maintain an office, nor is an employee available during normal business hours to answer the phone.

The response goes on to state that the above complaints "did not come from a prospective customer as has been defined in our commission notices as one who has made a written request for service." Although Mr. Murrin was not yet a customer, Chapter 25-30, Florida Administrative Code, applies to applicants as well. In addition, the utility's tariff provides that:

> Water service is furnished only after a signed application or agreement and payment of the initial connection fee is accepted by the Company. The conditions of such application or agreement is binding upon the customer as well as upon the Company. A copy of the application or agreement for water service accepted by the Company will be furnished to the applicant upon request. (emphasis added)

Staff notes that the utility's tariff requires a signed application, but does not specify that a potential customer must provide written notification that it wishes to request such application. Because Mr. Murrin lives out of state, he relies upon

the telephone to reach the utility in his efforts to obtain service. Had Wellaqua returned any of Mr. Murrin's phone calls, the utility could have informed Mr. Murrin, a potential customer who was requesting service, that an application was required in accordance with utility policy. At that time, the utility could have obtained an address for Mr. Murrin, who lives out of state, and sent an application for service to him. Although miscommunication between the utility and Mr. Murrin is evident, absent a written application for service, in accordance with the utility's rules, there does not appear to be sufficient information to indicate that the utility apparently violated Rule 25-30.310, Florida Administrative Code.

Additionally, staff has reviewed the utility's application for service form in its tariff (Original Sheet No. 26.1) and notes that the form contains the statement that a plant capacity charge of $300 is required to be paid before the application will be processed. Upon reviewing this provision, it appears that the utility would only collect the plant capacity charge from the initial owner of the dwelling for the first time service was initiated to that dwelling. Rule 3.0 on Original Sheet No. 7.0 states that water service is furnished only after a signed application or agreement and payment of the initial connection fee is accepted by the company. A similar tariff sheet (Original Sheet No. 27.1) addresses an Application for Meter Installation. This sheet refers to a meter installation fee of $200 that is required prior to the application being processed. Similarly, a review of this tariff page contemplates that the meter installation fee would only be paid by the first owner of the dwelling.

Based upon the foregoing, there does not appear to be sufficient information to indicate that the utility apparently violated Rule 25-30.310, Florida Administrative Code.

Rule 25-30.320 (Refusal or Discontinuance of Service), Florida Administrative Code

Rule 25-30.320(5)(a), Florida Administrative Code, provides that a delinquent payment by a previous occupant of the premises is not sufficient cause for a utility to refuse to provide service to a customer within its certificated territory.

In its response, the utility states: "The allegations of denial of service to a new owner for reasons of an outstanding bill owed by the previous owner are untrue." Staff is satisfied with the utility's response on this issue.

Based upon the utility's response and the facts and circumstances in this case, there does not appear to be sufficient information to indicate that the utility apparently violated Rule 25-30.320(5)(a), Florida Administrative Code, by refusing to provide service to a customer within its certificated territory because of a delinquent payment by a previous occupant of the premises. However, staff notes that in the event Mr. Murrin, the Division of Consumer Affairs, or staff had been able to reach Mr. Salmons, the owner of the utility, or had Mr. Salmons returned any of the numerous messages left, this discrepancy could have been resolved at that time.

Rule 25-30.320(2)(b), Florida Administrative Code, provides that a utility may refuse service to a customer for "failure or refusal of the customer to correct any deficiencies or defects in his piping or equipment which are reported to him by the utility". However, Rule 25-30.320(4), Florida Administrative Code, provides that "[i]n case of refusal to establish service, or whenever service is discontinued, the utility shall notify the applicant or customer in writing of the reason for such refusal or discontinuance."

In its response, the utility contends that "denial of service to the address in question was to protect the remaining customers from contamination from an unapproved private well which was improperly connected to the residence in question." The utility goes on to state that a previous owner of the residence in question, "who now lives next door and owns and resides on the property on which the private well is located ... was notified in writing approximately two years ago that the connection of the private well to the former residence was improper and should be corrected." Despite the fact that the utility admits denial of service to Mr. Murrin, Rule 25-30.320(2)(b), Florida Administrative Code, applies to customers, and Mr. Murrin was not yet a customer. For this reason, staff does not believe that this provision applies to Mr. Murrin.

Staff notes that the utility did not advise Mr. Murrin of any plumbing deficiencies or other conditions that would indicate a reason for the utility's inability to provide service without unreasonable delay. The utility maintains that the meter was "removed from its box to prevent the possibility of backflow from the private well into Wellaqua's system." Apparently, such action was taken due to "tampering to the shut-off valving associated with the meter." The utility goes on to state that:

> At the time of removal, the residence was vacant. The tenant had been refused service for an unpaid bill after he continued use of water from the private well. This occurred about two years ago. Upon notification that a new tenant was in residence a new meter was installed. This was in late May of this year, No connection could be made by Wellaqua to the residence supply line, because of residence line damage as well as not having an installed back-flow prevention device.

Wellaqua asserted that the real estate property manager was notified of this condition, but other real estate agents who became involved in the sale of the property were not aware of this condition, and prospective buyers of the property were not apprised of the plumbing deficiency. It is apparent to staff that the property owner, Mr. Murrin, was not notified of the plumbing problem, even though a new meter had been installed.

In its response, the utility never indicates that Mr. Murrin was responsible for tampering with any meter, nor is it evident that Mr. Murrin was even the owner of the residence in question at that time by Wellaqua. When a staff engineer visited the premises of the residence in question on June 22, 1999, water service was not being provided at that time. The engineer did not inspect the meter box to determine whether or not a meter was, in fact, installed as the utility stated.

Based upon the foregoing, none of the reasons listed by the utility in its response are sufficient cause for refusal or denial of service to a customer pursuant to the provisions of Rule 25-30.320(2)(b), Florida Administrative Code. Staff notes that since Mr. Murrin was not yet a customer, there does not appear to be sufficient information that the utility apparently violated this provision. However, by failing to provide written notification to Mr. Murrin regarding any of the deficiencies listed in its response, the utility appears to have apparently violated Rule 25-30.320(4), Florida Administrative Code. Staff does not believe that notifying the real estate agent of the plumbing deficiencies was sufficient. The utility should have made an effort to notify the new owner, when service was requested, of the known deficiencies, especially the potential for contamination of the utility's water system. Therefore, staff recommends that the utility apparently violated Rule 25-30.320(4), Florida Administrative Code.

Rule 25-30.330 (Information to Customers), Florida Administrative Code

Rule 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.

As previously stated, Mr. Murrin tried to reach the utility, but an answering machine, with no greeting or accompanying message that would indicate the number is in fact associated with the utility, received the calls. Members of staff also attempted to contact the utility, but reached the same answering machine.

In its response, the utility contends that Mr. Murrin could have:

> called Wellaqua's emergency beeper number which is noted on all customer's bills and was available to him via his sister. Had he but tried the emergency number he would have reached a real estate agent familiar with past service problems at that address and who would have informed him that improper plumbing existed that would forstall resumption of service until corrections were instituted.

While the utility's bills do contain both regular and emergency phone numbers (in Original Sheet No. 28.1 of the utility's tariff), bills are only mailed to customers. However, when staff tried to contact the utility at these numbers, an answering machine received the calls, but there was no greeting or accompanying message that would indicate the number is in fact associated with the utility.

The utility fails to recognize that Mr. Murrin had not yet received service; therefore, he would not have received a bill. Moreover, it is not the responsibility of Mr. Murrin to solicit, from his sister or anyone else, information that the utility has an obligation to provide pursuant to Commission Rules. Mr. Murrin lives out of town and has to rely on the telephone to contact the utility. Staff notes that Rule 25-30.330, Florida Administrative Code, applies to customers of the utility rather than applicants for service. Therefore, because Mr. Murrin was not yet a customer, staff does not believe that this rule applies in Mr. Murrin's situation.

Based upon the foregoing, staff recommends that the utility is not in apparent violation of Rule 25-30.330, Florida Administrative

Code, by its failure to provide information to its customers because Mr. Murrin was not yet a customer of Wellaqua.

Rule 25-30.355 (Complaints), Florida Administrative Code

Rule 25-30.355(3), Florida Administrative Code, 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."

As previously indicated, the utility failed to respond to repeated inquiries from the Commission's Division of Consumer Affairs, which attempted to contact the utility by phone on April 2, 1999, and April 13, 1999, without success. 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 this rule.

In its response, the utility does not address why it failed to respond to inquiries from Consumer Affairs, by failing to sign for the certified letter, and to the phone calls placed by Commission staff. The first response the Commission received from the utility was its August 30, 1999, response to the Show Cause Order. Staff verified that the certified letter sent to Wellaqua by Consumer Affairs were mailed to the same address as the Show Cause Order. The utility responded timely to the Show Cause Order, but gave no explanation in its response for its failure to pick up the certified letter or respond the numerous phone messages left by Consumer Affairs and Commission staff.

Based upon the foregoing, staff recommends that the utility apparently violated Rule 25-30.355, Florida Administrative Code, by failing to respond to Commission inquiries.

Rule 25-30.520 (Responsibility of Utility to Provide Service), Florida Administrative Code

Rule 25-30.520, Florida Administrative Code, provides: "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."

In its response, the utility indicates that service has been initiated to Mr. Murrin's residence. Staff has verified that water service was connected just prior to the July 27, 1999, agenda conference, when staff presented a recommendation to initiate show

cause proceedings against Wellaqua. Based upon the foregoing, staff recommends that the utility is not in apparent violation of Rule 25-30.520, Florida Administrative Code, since water service is now being provided to Mr. Murrin's residence.

Staff Conclusion and Recommendation

Based upon the information contained in utility's response to the Show Cause Order, staff concludes that there is sufficient information to support its recommendation that utility has apparently violated Rules 25-30.320(4) (Refusal or Discontinuance of Service), and 25-30.355 (Complaints), Florida Administrative Code. However, staff believes that there is insufficient information to find that the utility apparently violated Rules 25-30.310 (Initiation of Service), 25-30.330 (Information to Customers), 25-30.520 (Responsibility of Utility to Provide Service), Florida Administrative Code.

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.

Although staff recommends that the utility apparently violated the foregoing provisions of Chapter 25-30, Florida Administrative Code, staff does not believe the Commission should assess a fine for such apparent violations. The Commission uses fines to increase compliance with rules, orders and statutes. The primary objective for a show cause order is for the utility to achieve compliance. The main purpose of Order No. PSC-99-1609-SC-WU, the Show Cause Order, was to prompt the utility to provide service to Mr. Murrin. Staff has verified that service has been initiated. Additionally, because Citrus County rescinded Commission jurisdiction as of July 27, 1999, the Commission no longer has jurisdiction over Wellaqua. Therefore, future compliance with Commission rules is no longer necessary. Moreover, staff believes that the $7986 penalty, recommended in Issue 1, for apparent violation of Rule 25-30.110, Florida Administrative Code, is sufficient punishment for non-compliance by this utility.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If the Commission approves staff's recommendation in Issue 1, and the utility remits the penalty in the amount of $7,986, within 30 days of the issuance date of the Order, and submits pages F-3 and V-1 of the annual reports for 1995 through 1998 for the purpose of certifying revenues, staff believes this docket should be closed administratively upon staff's verification that the correct amount of RAFs have been paid. The utility should also file an annual report for January 1, 1999 through July 27, 1999, the period of time that the utility was subject to Commission jurisdiction. If the utility fails to remit the penalty amount listed above, and fails to respond to reasonable collection efforts by Commission staff, the outstanding penalty amount should be referred to the Comptroller's office for further collection efforts and this docket should be closed administratively. (CROSSMAN)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, and the utility remits the penalty in the amount of $7,986, within 30 days of the issuance date of the Order, and submits pages F-3 and V-1 of the annual reports for 1995 through 1998 for the purpose of certifying revenues, staff believes this docket should be closed administratively upon staff's verification that the correct amount of RAFs have been paid. The utility should also file an annual report for January 1, 1999 through July 27, 1999, the period of time that the utility was subject to Commission jurisdiction. If the utility fails to remit the penalty amount listed above, and fails to respond to reasonable collection efforts by Commission staff, the outstanding penalty amount should be referred to the Comptroller's office for further collection efforts and this docket should be closed administratively. Reasonable collection efforts should consist of two certified letters, sent by the Division of Legal Services, requesting payment of the $7,986 penalty imposed by the Commission. Referral to the Office of the Comptroller would be based upon the conclusion that further collection efforts by this Commission would not be cost effective.