

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show) DOCKET NO. 920777-WS
cause proceedings against) ORDER NO. PSC-92-1042-FOF-WS
SPRINGSIDE AT MANATEE, LTD. in) ISSUED: 09/23/92
Levy County for failure to)
remit penalty fee for filing)
delinquent 1989 annual report)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Springside at Manatee, Ltd. (Springside or utility), is a Class C utility, serving 45 water and wastewater customers in Levy County. Based on information in the 1991 annual report, the utility reported water system operating revenues of \$4,260 and operating expenses of \$8,227, resulting in a net operating loss of \$3,967. The utility reported wastewater system operating revenues of \$4,451 and operating expenses of \$16,145, resulting in a net operating loss of \$11,694.

Springside filed a delinquent 1989 annual report in violation of 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 31st each year to file an annual report on or before March 31st of the following year. Requests for extension must be in writing and must be filed before March 31st. One extension of 30 days is automatically granted. Longer extensions 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)(a), 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

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March 31st, or the approved extension date, and the actual date of filing. The date of filing is included in computing the number of days elapsed. This Commission may impose lesser or greater penalties, pursuant to Rule 25-30.110(6)(c), Florida Administrative Code.

Springside, a Class C utility, filed a delinquent 1989 annual report. By letter of March 16, 1990, we informed the utility that it must file its 1989 annual report on or before March 31, 1990, or it would be in violation of Rule 25-30.110(3), Florida Administrative Code. On March 30, 1990, a request for the 30-day extension was received, and we allowed the utility an extension ending April 30, 1990, to file its 1989 annual report.

We did not receive a response from the utility until August 14, 1991, when we received the 1989 and 1990 annual reports from Springside. The reports were accompanied with a letter requesting that the penalties for late filing be waived due to "unavoidable delays and inexperience." The utility asserted that Commission requirements regarding the annual reports were not made known to the utility until March 1990, which was approximately 18 months after Springside at Manatee, Ltd. purchased the utility from Springside, Inc.

On October 8, 1991, we sent a certified letter to Springside at Manatee, Ltd., stating that the penalty for the late filing of the 1989 annual report was \$1,413 (471 days delinquency at \$3 per day). The letter also stated that the \$1,413 payment was due on or before November 8, 1991. The utility was also assessed a penalty of \$408 for the late filing of its 1990 annual report (136 days delinquency at \$3 per day); this payment was received on February 8, 1992. However, no response has been received from the utility to date regarding the 1989 penalty.

The utility filed an application for a transfer of Certificates Nos. 435-W and 366-S on May 7, 1990, and the transfer was approved on January 8, 1991, by Order No. 23970. However, while Springside, Inc. held the certificates to the systems during 1989, the systems were owned and operated by Springside at Manatee, Ltd. from October 21, 1988, and thereafter. Therefore, Springside at Manatee, Ltd. is responsible for the penalty for untimely filing the 1989 annual report because it owned the system as of December 31, 1989.

In consideration of the foregoing, it appears that Springside has failed to comply with the 1989 annual report requirements, and is in violation of Rule 25-30.110, Florida Administrative Code.

Therefore, we hereby order Springside at Manatee, Ltd. to show cause, in writing, within twenty days, why it should not be fined \$1,413 for its failure to comply with the 1989 annual report requirements.

If the utility fails to respond to the show cause within twenty days of the issuance of this Order, the penalty of \$1,413 shall be imposed without further action by this Commission. The failure of the utility to file a timely response to the show cause order shall constitute both an admission of the facts alleged and a waiver of any right to a hearing.

If Springside fails to respond to reasonable collection efforts by this Commission, we deem the fine 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.

If, however, the utility responds to the show cause by remitting the \$1,413 penalty, no further action is required, and this docket shall be closed administratively.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Springside at Manatee, Ltd., in Levy County, shall show cause, in writing, within twenty days, why it should not be fined \$1,413 for failure to file its 1989 annual report as required by Rule 25-30.110, Florida Administrative Code. It is further

ORDERED that Springside at Manatee, Ltd.'s written response must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 13, 1992. It is further

ORDERED that Springside at Manatee, Ltd.'s response must contain specific allegations of fact and law. It is further

ORDERED that Springside at Manatee, Ltd.'s opportunity to file a written response shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission, as required under Rule 25-30.110(6)(c), Florida Administrative Code. It is further

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ORDERED that a failure to file a timely response to this show cause order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that in the event that Springside at Manatee, Ltd. files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that if Springside at Manatee, Ltd. fails to file a timely response to this show cause order, the fine of \$1,413 shall be imposed, pursuant to Rule 25-30.110, Florida Administrative Code. It is further

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

ORDERED that if the utility responds to the show cause by remitting the penalty, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 23rd day of September, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

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