

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show) DOCKET NO. 920690-WU
cause proceedings against) ORDER NO. PSC-92-1134-FOF-WU
LINADALE WATER COMPANY in) ISSUED: 10/06/92
Marion County for failure to)
remit penalty fee for filing)
delinquent 1988 annual report)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Linadale Water Company (Linadale or utility), is a Class C utility, serving 227 water customers in Marion County. Linadale has not timely filed its 1988 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 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 a 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)(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 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.

DOCUMENT NUMBER-DATE

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On April 3, 1989, we received a letter from Ms. Fannie Shields (now Walton), a partner of Linadale Water Company, which requested a 60-day extension for filing its 1988 annual report. On April 6, 1989, we approved a 30-day extension, and allowed Linadale until April 30, 1989, to file its 1988 annual report.

The 1988 annual report was received on November 26, 1989. On September 30, 1991, we mailed a certified letter to Ms. Walton, stating that a fine of \$630 would be due for a delinquency of 210 days at \$3 per day. In the letter, we requested that the \$630 fine be paid on or before October 30, 1991. In this letter, a typographical error was discovered which indicated that the utility had been granted an extension through April 30, 1990. In fact, as stated in the extension letter, the extension had been granted through April 30, 1989.

In a letter dated October 14, 1991, Ms. Walton stated that she did not understand why she was being fined for failing to file the 1988 annual report because she believed that the extension date indicated it was due April 30, 1989, and thus she had filed the report some five months before this date. In this letter, Ms. Walton requested that if she indeed had to pay a fine she would like to set up a payment schedule on a monthly basis.

In response to the penalty letter, Ms. Walton, by way of letter dated October 29, 1991, requested the penalty be waived due to financial hardship. Ms. Walton's letter also stated that her husband's (Carl Shields') death in July, 1988 had caused a disruption in the record keeping, thus causing a delay in the filing of the aforementioned annual report.

Although it is unfortunate that this typographical error did cause some confusion about when the annual report was actually due, we believe that a fine is still appropriate. Our letter dated April 6, 1989, which granted the utility's request for a 30-day extension is the controlling document in this proceeding. That letter clearly indicated that the utility had until April 30, 1989, to file its 1988 annual report. Further, we believe that the utility should not be granted a waiver due to financial hardship, as Ms. Walton has already agreed in a previous letter to work out a payment schedule, if necessary.

We researched the history of Linadale regarding any show cause proceedings filed against the utility. The utility filed its 1987 annual report 28 days past an extended deadline granted the utility. On August 22, 1988, a certified letter was sent to the utility regarding the penalty due for the untimely filing of the 1987 annual report. The report was filed 28 days late and this utility was fined \$3 per day for a total of \$84. Ms. Myrtle Shields requested a waiver of this penalty due to the fact that a death in the family had disrupted her record keeping. Ms. Shields' request was granted by this Commission in Order No. 22440, issued January 22, 1990.

In consideration of the foregoing, it appears that Linadale has failed to comply with the 1988 annual report filing requirements, and is in violation of Rule 25-30.110, Florida Administrative Code. Therefore, we hereby order Linadale to show cause in writing, within twenty days, why it should not be fined \$630 for its failure to timely submit the 1988 annual report.

If the utility fails to respond in writing to the show cause within twenty days of the issuance of this Order, the penalty of \$630 shall be imposed without further action by this Commission. The failure of the utility to file a timely response to this show cause order shall constitute both an admission of the facts alleged and a waiver of any right to a hearing.

If Linadale 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 by this Commission 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 \$630 penalty, no further action is required.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Linadale Water Company, in Marion County, shall show cause, in writing, within twenty days, why it should not be fined \$630 for failure to file its 1988 annual report as required in Rule 25-30.110, Florida Administrative Code. It is further

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ORDERED that Linadale Water Company's 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 26, 1992. It is further

ORDERED that Linadale Water Company's response must contain specific allegations of fact and law. It is further

ORDERED that Linadale Water Company'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

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 Linadale Water Company 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 Linadale Water Company fails to file a timely response to this show cause order, the fine of \$630 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

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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 6th day of October, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

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