

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show ) DOCKET NO. 920777-WS  
cause proceedings against ) ORDER NO. PSC-92-1360-FOF-WS  
SPRINGSIDE AT MANATEE, LTD. in) ISSUED: 11/24/92  
Levy County for failure to )  
remit penalty fee for filing )  
delinquent 1989 annual report )  
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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 FINING UTILITY FOR DELINQUENT  
FILING OF 1989 ANNUAL REPORT

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)(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

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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.

Pursuant to Order No. PSC-92-1042-FOF-WS, issued September 23, 1992, we ordered Springside to show cause 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. On October 9, 1992, we received a timely response to the show cause order in the form of a letter from the utility which requested that the fee be waived.

Springside stated that since the Commission did not address the issue during its staff assisted rate case during 1992, the utility assumed that the fine had been waived. In addition, the utility argued that the penalty is unfair because Springside was not the holder of the certificates for the systems during the period of time in which the penalty accrued. The utility also argued that the Commission sent a certified letter to someone other than a utility representative concerning the utility's failure to file its annual report. Finally, the utility claimed that the fine is unfair due to its operating loss of \$10,000 in 1989.

The failure of a utility to timely file an annual report is usually handled separate from rate cases. Regarding the utility's claims concerning the fact that it was not the holder of the certificates during the time period in question, the utility filed an application for a transfer of Certificates Nos. 435-W and 366-S on May 7, 1990, and the utility was granted the transfer on January 8, 1991, by Order No. 23970. However, while Springside, Inc., the company's former owner and name, 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 liable for the fine for untimely filing the 1989 annual report because it owned the systems as of December 31, 1989.

On March 16, 1990, a certified letter was sent to Mr. Pete Parsons, representative of the utility, indicating that the utility 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. The letter also stated that the utility would be able to receive a 30-day extension if a timely request was made in writing. On March 30, 1990, a request for the 30-day extension was received as requested by Mr. Kenneth Drummond. On April 2, 1990, a letter was sent to Mr. Drummond granting the 30-day extension and allowing the utility until April 30, 1990, to file its 1989 annual report.

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Although a letter was sent in July of 1990, to someone unrelated to the utility, stating that Springside's 1989 Annual Report had not been received, the extension letter that granted a new filing date of April 30, 1990, put the utility on notice as to the appropriate filing date.

In consideration of the foregoing, we find it appropriate that Springside remit a reduced fine of \$706.50, or one-half of the initial fine of \$1,413, for filing delinquent 1989 annual report in violation of Rule 25-30.110, Florida Administrative Code.

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 by this Commission would not be cost effective. Reasonable collection efforts shall consist of two certified letters requesting payment.

If, however, the utility responds by remitting the \$706.50 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 pay a fine of \$706.50, for violation of 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 remits the fine imposed, this docket shall be closed administratively.

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By ORDER of the Florida Public Service Commission this 24th  
day of November, 1992.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

LK

by: Kay Flynn  
Chief, Bureau of Records

Commissioner Clark dissented. She believed the full penalty  
of \$1,413 to be appropriate.

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 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.