

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: February 1, 2007

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Kaproth)
Office of the General Counsel (Jaeger)

RE: Docket No. 060754-WS – Request for waiver of 2005 annual report penalty for Ferncrest Utilities, Inc.
County: Broward

AGENDA: 02/13/07 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060754.RCM.DOC

Case Background

Ferncrest Utilities, Inc. (Ferncrest or utility) is a Class B water and wastewater utility located in Broward County. The utility provides service to 1,556 water and 1,493 wastewater customers. Based on the utility's 2005 Annual Report, Ferncrest reported gross annual revenues of \$626,984 and \$788,822; operating expenses of \$597,601 and \$687,093; and net operating incomes of \$29,383 and \$101,729 for water and wastewater, respectively.

On February 23, 2006, the utility requested a thirty-day extension to file its 2005 Annual Report, which was due on March 31, 2006. Pursuant to Rule 25-30.110(3), Florida Administrative Code (F.A.C.), this request was automatically granted. On April 26, 2006, the

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utility timely requested an additional extension to file its annual report by May 16, 2006. On April 27, 2006, the request was granted and the due date for the 2005 Annual Report became May 16, 2006. On July 12, 2006 and August 30, 2006, the Division of Economic Regulation wrote letters to the utility notifying the utility that its 2005 Annual Report was late. These letters stated that pursuant to Rule 25-30.110(6) and (7), F.A.C., the penalty for a Class B utility is \$13.50 per day for each calendar day elapsed from the due date of the annual report to the date of filing. The 2005 Annual Report was finally filed on October 27, 2006, 164 days late. On the same day it filed its 2005 Annual Report, the utility requested by letter that the penalty not be assessed as there was good cause for noncompliance.

This recommendation addresses Ferncrest's petition for waiver of its 2005 Annual Report penalty. The Commission has jurisdiction pursuant to Section 367.121, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission impose penalties on Ferncrest Utilities, Inc. for its failure to timely file its 2005 Annual Report?

Recommendation: No. Because the utility has demonstrated good cause for noncompliance, the penalty set out in Rule 25-30.110(7), F.A.C., should not be assessed. (Kaproth, Jaeger)

Staff Analysis: As stated in the Case Background, Ferncrest was granted two extensions of time to file its 2005 Annual Report, but still filed its report 164 days late. Based on Rule 25-30.110(7)(b), F.A.C., the standard penalty for a Class B utility is \$2,214 (164 days x \$13.50 = \$2,214). The utility indicates that there is good cause for the noncompliance and states that the requested waiver relates solely to the penalties associated with the 2005 Annual Report.

Rule 25-30.110(3), F.A.C., requires utilities subject to the Commission's jurisdiction as of December 31st of any year to file an annual report for that year. The report is due by March 31st for the preceding year ending December 31st, but was extended to May 16, 2006, in this case.

In his written request, Dr. Andrew E. Trumbach, the utility's accountant, states the basis for the first two extensions was because he became ill in February 2006, underwent a series of diagnostic tests and therapy, and was primarily out of the office. Dr. Trumbach further explains that he was admitted to the Palms West Hospital and underwent emergency surgery. Lastly, Dr. Trumbach was not able to return to work until October 16, 2006.

Within eleven days after returning to work, Dr. Trumbach reviewed the utility's books, brought the books forward, prepared the 2005 Annual Report, and filed the report with the Commission. He further explains that the utility has filed its annual reports on a timely basis over the past ten years that he has been employed by Ferncrest. On the same date that he filed Ferncrest's 2005 Annual Report, the utility requested in writing that the standard penalty be waived.

Rule 25-30.110(6)(c), F.A.C., states that a utility shall be subject to the penalties imposed herein unless the utility demonstrates good cause for the noncompliance. Further, the Commission may, in its discretion, impose penalties for noncompliance that are greater or lesser than provided therein. Staff believes that Ferncrest has shown good cause as to why the 2005 Annual Report was not filed timely. Staff has also verified that the utility has not previously filed an Annual Report late in the last ten years. Therefore, staff recommends that the Commission not impose the standard penalty and grant the utility's request that the \$2,214 penalty not be assessed.

Issue 2: Should this docket be closed?

Recommendation: Yes, if no protest to this proposed agency action is filed by a person whose interests are substantially affected within 21 days of the Order arising from this recommendation, the docket should be closed upon the issuance of a Consummating Order. If a timely protest to the proposed agency action is filed by a person whose substantial interests are affected within 21 days of the Commission Order, the docket should remain open pending the resolution of the protest. (Jaeger)

Staff Analysis: If no protest to the proposed agency action is filed by a person whose interests are substantially affected within 21 days of the Order arising from this recommendation, the docket should be closed upon the issuance of a Consummating Order. If a timely protest to the proposed agency action is filed by a person whose substantial interests are affected within 21 days of the Commission Order, the docket should remain open pending the resolution of the protest.