

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Service investigation of)	DOCKET NO. 881075-SU
LANIER UTILITY COMMISSION in)	ORDER NO. 20884
PASCO COUNTY.)	ISSUED: 3-13-89
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The following Commissioners participated in the disposition of this matter:

GERALD L. GUNTER
JOHN T. HERNDON

ORDER REVOKING LANIER UTILITY COMMISSION'S
CERTIFICATE NO. 280-S AND FINING LANIER
UTILITY COMMISSION AND MR. BARRY LANIER

BY THE COMMISSION:

BACKGROUND

By Order No. 19876, issued August 24, 1988, this Commission ordered Lanier Group, Inc. d/b/a Lanier Utility Commission (Lanier Utility Commission or the Utility) to immediately interconnect its sewer system with the City of Port Richey's sewer system. This Commission took that action because Gator Water Inc., the contract operator for this Utility, had suspended its services July 15, 1988. As a result, over 9,000 gallons of sewage per day were flowing through the sewage plant without a certified operator's supervision and without prescribed treatment and disinfection. This was in direct violation of the statutory requirements of Section 367.111, Florida Statutes, to provide safe, sufficient and efficient service, as well as in violation of the provisions of Chapter 403.021, Florida Statutes, against the discharge of waste, and the rules and regulations of this Commission and of the Department of Environmental Regulation. Our staff and the staff of various other agencies had attempted, unsuccessfully, to reach Mr. Barry Lanier, the President and Director of the owner corporation, Lanier Group, Inc. d/b/a Lanier Utility Commission.

The City of Port Richey had earlier passed Resolution No. 88-15, at its August 9, 1988, City Council session. In its Resolution, the City indicated that it possessed the capacity to serve Lanier Utility Commission's customers and that it was willing to interconnect to that system to serve those customers. Also, the City indicated that it was willing to serve as billing agent for Lanier Utility Commission's customers for a period of 60 days. As a result, we issued Order No. 19876 requiring the Utility to interconnect with the City of Port Richey. Subsequently, on September 16, 1988, the City of Port Richey interconnected with the Lanier Utility Commission sewer system. By Order No. 20405, issued December 2, 1988, we requested Pasco County to pursue the appointment by the circuit court of a receiver for Lanier Utility Commission.

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REVOCATION OF CERTIFICATE NO. 280-S
AND FINES IMPOSED AGAINST LANIER UTILITY COMMISSION
AND MR. BARRY LANIER FOR ABANDONMENT WITHOUT NOTICE

Order No. 20405 also required Lanier Utility Commission and Mr. Barry Lanier, individually, to show cause in writing within twenty days why its Certificate No. 280-S should not be revoked for abandonment of its system without notice on July 15, 1988. Also, we required that Lanier Utility Commission and Mr. Barry Lanier show cause why they should not be fined \$5,000 per day since the abandonment of the sewer system in Pasco County on July 15, 1988.

To this date, we have not received any response to Order No. 20405 from Lanier Utility Commission or Mr. Barry Lanier. Neither have we received any written notice of abandonment of Lanier Utility Commission as required by Section 367.165, Florida Statutes. Since the contract operator suspended its services in July, 1988, there has been no contact with Mr. Barry Lanier, President and Director of Lanier Group, Inc. d/b/a Lanier Utility Commission, despite our efforts to reach the parties by U. S. Mail and by telephone. We sent a registered letter to Mr. Lanier on August 12, 1988. The postal service returned the letter to the Commission with a notation that, after two notices, the letter remained unclaimed by Mr. Lanier.

Our Division of Records and Reporting sent a copy of Order No. 20405 to the only official address this Commission has for Mr. Lanier and Lanier Utility Commission and received it back as "non-deliverable" and "non-forwardable." This is the same address used for the earlier registered letter: 1044 U.S. 19 South, Palm Harbor, Florida 34683. This address is reflected on the most recent tariff sheets and the most recent directory of water and sewer companies regulated by this Commission. If Mr. Lanier has changed his address, he has not informed this Commission, as is his responsibility. To this date, this Commission has received no response of any kind from the Utility or Mr. Lanier. It is likely that Mr. Lanier has been aware for some time that his Utility is currently interconnected with the City of Port Richey.

Section 367.165, Florida Statutes, states:

It is the intent of the Legislature that water or sewer service to the customers of a utility not be interrupted by the abandonment or placement into receivership of the utility. To that end:

(1) No person, lessee, trustee, or receiver owning, operating, managing, or controlling a utility shall abandon the utility without giving 60 days' notice to the county or counties in which the utility is located and to the commission. Anyone who violates the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of such abandonment constitutes a separate offense. In addition, such act is a violation of this

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chapter, and the commission may impose upon the utility a penalty for each such offense of not more than \$5,000 or may amend, suspend, or revoke its certificate; each day of such abandonment without prior notice constitutes a separate offense.

(2) After receiving such notice, the county, or counties acting jointly if more than one county is affected, shall petition the circuit court of the judicial circuit in which such utility is domiciled to appoint a receiver, which may be the governing body of a political subdivision or any other person deemed appropriate. The receiver shall operate the utility from the date of abandonment until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service.

(3) The notification to the commission under subsection (1) is sufficient cause for revocation, suspension, or amendment of the certificate of the utility as of the date of abandonment. The receiver operating such utility shall be considered to hold a temporary authorization from the commission, and the approved rates of the utility shall be deemed to be the interim rates of the receiver until modified by the commission.

As is clear from the above-cited statute, Lanier Group, Inc. d/b/a Lanier Utility Commission has violated Florida law by abandoning its provision of utility service without notifying this Commission. Order No. 20405 states that a failure to file a timely response to that Order shall constitute an admission of the facts alleged and a waiver of any right to a hearing. Because our Division of Records and Reporting mailed Order No. 20405 to the official mailing address of this Utility, the Order has been properly served pursuant to Commission Rule 25-22.005(7), Florida Administrative Code. This Rule requires that utilities file a notice of change of address in writing with our Division of Records and Reporting and states that any document, order or notice served on the name and address on file prior to the date of receipt of such written notification shall be considered properly served. Therefore, pursuant to our authority in Section 367.165, Florida Statutes, we find it appropriate to revoke Lanier Utility Commission's certificate. The Utility shall surrender Certificate No. 280-S to this Commission within ten days of the issuance of this Order.

Section 367.165, Florida Statutes, provides that this Commission may impose a fine of up to \$5,000 per day for abandonment without notice. It also states that each such day of abandonment without notice constitutes a separate offense. Mr. Barry Lanier's and Lanier Utility Commission's abandonment of its sewer system in Pasco County without notice is a direct violation of Section 367.165, Florida Statutes. Among the

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various violations this Commission addresses, abandonment of a sewer system without appropriate notice certainly ranks in the highest order of magnitude of significance. For this reason, we believe it would be appropriate to fine Lanier Utility Commission and Mr. Lanier the maximum \$5,000 per day since the abandonment on July 15, 1988. However, that would result in a fine of \$1,045,000. We find it more appropriate to limit the fine to the value of the Utility's rate base. The last proceeding in which this Utility's rate base was considered was in a staff-assisted rate case processed in Docket No. 850632-SU. Order No. 17858, issued July 16, 1987, authorized final rates for this Utility based on the calculation of interim rates contained in Order No. 15969, issued April 8, 1986. Order No. 15969 determined Lanier Utility Commission's rate base to be \$145,624.

Therefore, we hereby fine Lanier Utility Commission and Mr. Barry Lanier, individually, \$145,624. This fine amount shall be collected from Lanier Utility Commission to the extent possible. Any amount uncollectible from the Utility shall be collected from Mr. Lanier, personally.

Section 367.165(1), Florida Statutes, also provides that violation of that Section shall constitute a misdemeanor of the first degree. Therefore, we direct our staff to contact the appropriate State Attorney's office to notify it of this violation of Florida law.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that Lanier Utility Commission's Certificate No. 280-S is hereby revoked. The Utility, located at 1044 US 19 South, Palm Harbor, Florida 34683, shall surrender its Certificate within ten days of the issuance of this Order. It is further

ORDERED that Lanier Utility Commission and Mr. Barry Lanier, individually, are hereby fined \$145,624 for abandonment of its sewer system in Pasco County without notice. It is further

ORDERED that our staff shall notify the appropriate State Attorney's office of this violation of Florida law.

By ORDER of the Florida Public Service Commission this 13th day of MARCH, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SFS

by: Kay Ferguson
Chief, Bureau of Records

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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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.