

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Notice of Abandonment of) DOCKET NO. 941330-WU
Facility in Putnam County by) ORDER NO. PSC-95-0844-FOF-WU
Landis Enterprises, Inc.) ISSUED: July 14, 1995
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER ACKNOWLEDGING ABANDONMENT, APPOINTMENT OF RECEIVER, AND
EXEMPT STATUS OF RECEIVER
AND
NOTICE OF PROPOSED AGENCY ACTION ORDER ESTABLISHING
RESPONSIBILITY FOR PAYMENT OF REGULATORY ASSESSMENT FEES AND
FILING ANNUAL REPORT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein requiring Landis Enterprises, Inc., to pay regulatory assessment fees, but not requiring the filing of the 1994 annual report, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On December 23, 1994, Landis Enterprises, Inc., (LEI) filed a notice of abandonment of the Port Buena Vista Water System (PBV or utility) with this Commission pursuant to Section 367.165, Florida Statutes. PBV is a class C utility presently serving 64 customers. According to its 1993 annual report, the utility earned revenues of \$14,299 in that year and suffered a net operating loss of \$16,816.

We granted LEI Certificate No. 558-W in Order No. PSC-94-0804-FOF-WU, issued June 29, 1994. LEI purchased the utility on June 3, 1993, following P.B.V. Corporation's notice of abandonment on January 14, 1993. On September 14, 1994, LEI applied for a staff-assisted rate case for PBV. In the staff-assisted rate case, Docket No. 940974-WU, in Order No. PSC 94-1464-FOF-WU, issued November 29, 1994, we approved installment payment plans for the

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staff-assisted rate case application fee and delinquent regulatory assessment fees. Later in that docket, in Order No. PSC-95-0043-FOF-WU, issued January 10, 1995, we denied the utility emergency rate relief. We placed the staff-assisted rate case in abeyance by Order No. PSC-95-0429-WU, issued March 29, 1995.

ACKNOWLEDGMENT OF ABANDONMENT AND APPOINTMENT OF RECEIVER

On March 27, 1995, Circuit Judge A. W. Nichols, III, Circuit Court, Seventh Judicial Circuit, Putnam County, Florida, appointed the Board of County Commissioners, Putnam County, as the receiver for PBV.

The order appointing the receiver provided that:

- 1) The receiver was appointed with full authority as set forth in Section 367.165, Florida Statutes, and other applicable law;
- 2) The receiver has ingress and egress rights over, and full use of, such real and personal property as is necessary to maintain, service and otherwise facilitate the operation of the system;
- 3) LEI provide to the receiver all blueprints, drawings and other documents relating to the water system, copies of pertinent contracts, leases and other agreements, a list of system defects and malfunctioning or inoperative facilities, a list of existing violations, funds necessary to make necessary repairs and cure existing violations, and other pertinent documents;
- 4) The receiver shall have no liability for debts, costs or other obligations related to the system incurred before the receivership; and
- 5) Without limiting the receiver's authority to make expenditures, the receiver's liability in operating the system is limited to the revenues collected from the system's customers by the receiver.

Pursuant to Rule 25-30.090(3), Florida Administrative Code, we furnished Putnam County with a copy of PBV's tariff and most recent annual report. The utility's plant is in poor condition and has serious Department of Environmental Protection compliance problems related to the quality of water.

Accordingly, we find it appropriate to acknowledge Landis Enterprises, Inc.'s abandonment of the Port Buena Vista Water System and the appointment on March 27, 1995, of Putnam County as the receiver for the utility.

EXEMPTION

On March 28, 1995, Putnam County, requested an exemption from Commission regulation pursuant to Section 367.022(2), Florida Statutes. Rule 25-30.090(6), Florida Administrative Code, provides that a governmental authority appointed as receiver by the circuit court shall, upon request, be found exempt pursuant to Section 367.022(2), Florida Statutes. Accordingly, we acknowledge the exempt status of Putnam County as the receiver for the Port Buena Vista Water System.

RESPONSIBILITY FOR PAYING 1994 REGULATORY ASSESSMENT FEE AND
FILING 1994 ANNUAL REPORT

Pursuant to Section 367.121(1)(c), Florida Statutes, and Rule 25-30.110, Florida Administrative Code, each regulated utility shall file an annual report with the Commission by March 31 for the preceding calendar year. In addition, a regulated utility is required to remit regulatory assessment fees each year based upon its gross operating revenues, pursuant to Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code. The abandonment of the utility does not eliminate the utility's responsibility for payment of the fees or filing the annual report.

We recognize that the receiver could, in some cases, discharge the utility's accrued liability for regulatory assessment fees by advancing funds from its own resources, subsequently recovering them through increased rates. However, we believe it to be inappropriate to in any way encourage the receiver to take that step, because the unjust effect would be to tax the utility's customers a second time for those fees. Moreover, our essential interest is that the receiver provide uninterrupted efficient and effective water service to the utility's customers, while addressing those deficiencies that threaten the utility's viability.

In this case, the utility's obligation to pay the regulatory assessment fee for 1994 arose prior to LEI's abandonment. Additionally, LEI fully collected those revenues upon which the fee for 1994 is assessed before the abandonment. Thus, we find that LEI is responsible for payment of regulatory assessment fees due for calendar year 1994 and up to March 27, 1995, the date the

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receiver was appointed. Furthermore, we find it appropriate that LEI be given 60 days from the effective date of this order to pay the past-due 1994 regulatory assessment fee for PBV, with penalties and interest.

Section 367.145, Florida Statutes, provides that a governmental authority to whom control of a regulated utility passes is not liable for any fees owed the Commission by the utility as of the passing date. The court's order appointing Putnam County receiver provides that the receiver shall have no liability for debt, costs or other obligations relating to the system incurred prior to the receiver's appointment and that the receiver's liability in respect to operating the system is limited to the revenues collected from the utility's customers. We have herein acknowledged Putnam County's exemption as a governmental authority acting as receiver pursuant to Section 367.022(2), Florida Statutes, and Rule 25-30.090(6), Florida Administrative Code, and, therefore, no regulatory assessment fees will be owing after the date of the County's appointment.

As with the obligation for the regulatory assessment fee, LEI's obligation to file PBV's annual report for 1994 arose prior to abandonment. However, we have, again, acknowledged Putnam County's exempt status, and so we will not regulate this system as long as the county operates it as its receiver. We find that we have no need for the utility's 1994 annual report and, therefore, we will not require LEI to file it.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that the abandonment of the Port Buena Vista Water System by Landis Enterprises, Inc., and the appointment on March 27, 1995, of the Putnam County Board of County Commissioners as the receiver for the Port Buena Vista Water System is herein acknowledged. It is further

ORDERED that the exempt status of Putnam County, pursuant to Section 367.022(2), Florida Statutes, is herein acknowledged. It is further

ORDERED that Landis Enterprises, Inc., shall be responsible for payment of regulatory assessment fees for calendar year 1994 and up to March 27, 1995. It is further

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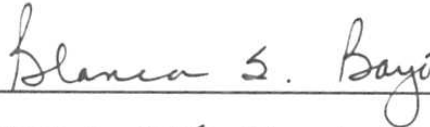
ORDERED that Landis Enterprises, Inc., shall remit the utility's 1994 regulatory assessment fee, with penalties and interest, within 60 days of the effective date of this order. It is further

ORDERED that Landis Enterprises, Inc., shall not be required to file the 1994 annual report. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 14th day of July, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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.

As identified in the body of this order, our action requiring Landis Enterprises, Inc., to pay regulatory assessment fees, but not requiring the filing of the 1994 annual report is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 4, 1995. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.

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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 wastewater 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.