

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff-) DOCKET NO. 940974-WU
assisted rate case in Putnam) ORDER NO. PSC-95-0864-FOF-WU
County by Landis Enterprises,) ISSUED: July 17, 1995
Inc.)
_____)

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

BY THE COMMISSION:

NOTICE OF PROPOSED AGENCY ACTION ORDER ESTABLISHING
RESPONSIBILITY FOR PAYMENT OF REGULATORY ASSESSMENT FEES

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein requiring Landis Enterprises, Inc., to pay 1992 and 1993 regulatory assessment fees 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

Port Buena Vista Water System (PBV or utility) is a Class C water utility serving 59 residential customers and 5 general service customers in East Palatka in Putnam County (County). The system's then owner, P.B.V. Corporation, applied on February 26, 1993, for certification, but soon thereafter abandoned the utility. On March 15, 1993, Landis Enterprises, Inc. (LEI), was appointed receiver for the utility. On June 3, 1993, LEI purchased the utility. We approved LEI's application for a water certificate by Order No. PSC-94-0804-FOF-WU, issued June 29, 1994, granting Certificate No. 558-W, in which we also set rates and charges.

On September 14, 1994, Water Spectrum, Inc., (WSI) a management company affiliated with LEI through common ownership, applied for a staff-assisted rate case for PBV. WSI requested a payment plan for the staff-assisted rate case filing fee and the utility's delinquent 1992 and 1993 regulatory assessment fees, as

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well as waiver of penalties and interest. By Order No. PSC-94-1464-FOF-WU, issued November 29, 1994, we approved payment plans for both the application filing fee and the delinquent regulatory assessment fees, but declined to waive penalties and interest. The payment plan for the staff-assisted rate case filing fee allowed installment payments over an eight month period, with the first payment due by December 8, 1994, and subsequent payments by the first working day of the month. If any payment were not timely made, the docket was to be closed. The payment plan for the delinquent regulatory assessment fees allowed payments over a four month period, with the same conditions as for the filing fee. The installment payment plans were approved subject to the final approval of the State of Florida Comptroller's Office. That approval was granted on November 30, 1994.

The utility made three of the installment payments of the filing fee, the last two, late. The first payment was made on December 8, 1994; the second, due on January 3, 1995, was made on January 18, 1995; and the third, due on February 1, 1995, was made on February 15, 1995. The utility made the first installment payment of the regulatory assessment fees in a timely manner, but made no others.

On October 4, 1994, LEI filed a petition for interim rates for PBV during the pendency of the utility's staff-assisted rate case. LEI represented that the utility's existing rates, authorized with the issuance of its certificate, were inadequate to cover day-to-day operation, maintenance, and management expenses. We had approved a flat rate on the basis of customer affidavits, and service availability charges, miscellaneous charges, and customer deposits as requested by LEI in Order No. PSC-94-0804-FOF-WU. By Order No. PSC-95-0043-FOF-WU, issued January 10, 1995, we denied the utility emergency rate relief, finding that it could cover those expenses with current revenues.

On December 23, 1994, LEI filed with this Commission and the Circuit Court, Putnam County, Seventh Judicial Circuit, a notice of abandonment of PBV, on or before February 28, 1995. The matter was docketed in Docket No. 941330-WU. On February 13, 1995, Putnam County petitioned the circuit court for appointment of a receiver for PBV. On March 27, 1995, Judge A.W. Nichols, III, appointed the Board of County Commissioners, Putnam County, receiver for PBV.

As a result of Order No. PSC-95-0429-FOF-WU, issued March 29, 1995, this docket was placed in abeyance for 60 days to give the appointed receiver for PBV an opportunity to inform us that the staff-assisted rate case should be reactivated and to complete payment of the staff-assisted rate case application fee in

accordance with the approved payment plan. However, by letter to the Commission, the County requested exempt status pursuant to Section 367.022(2), Florida Statutes, and Rule 25-30.090(6), Florida Administrative Code. We have acknowledged the County's exempt status separately and, in this order, we address the issue reserved in Order No. PSC-95-0429-FOF-WU, i.e., the status of this docket, Docket No. 940974-WU, in light of the utility's still-unpaid 1992 and 1993 regulatory assessment fees.

RESPONSIBILITY TO PAY 1992 AND 1993 REGULATORY ASSESSMENT FEES

As earlier noted, in Order No. PSC-94-1464-FOF-WU, we approved an installment payment plan for PBV's delinquent regulatory assessment fees for 1992 and 1993, together with penalties and interest. The approved plan required LEI to make four successive monthly installment payments of \$447.22, beginning December 8, 1994, to discharge the total obligation of \$1788.88 by March 31, 1995. LEI remitted only the first of these payments.

In that order, we required that this docket be closed if any one of the installment payments of the delinquent regulatory assessment fees were not timely made. However, under the new circumstances of LEI's abandonment, in a later order, Order No. PSC-95-0429-FOF-WU, we found it inappropriate to close the docket for this reason. Rather, we determined that we would await the disposition of Putnam County's petition for the appointment of a receiver for the utility, which was then pending before the court, before further considering the responsibility for payment of the delinquent regulatory assessment fees and attendant penalties and interest.

Regulated utilities are required to remit regulatory assessment fees each year based upon gross operating revenues, pursuant to Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code. In establishing rates, an amount equal to the regulatory assessment fee is included in calculating the revenue requirements of a utility. Thus, the utility collects the regulatory assessment fee by means of its rates. The abandonment of the utility does not eliminate the utility owner's responsibility for payment of the fee.

We reject the suggestion that Putnam County, as the receiver for the utility, be held responsible for payment of the delinquent 1992 and 1993 regulatory assessment fees, for which the utility had become fully obligated before LEI's abandonment. The suggestion rests upon characterizing the fees as a debt of the utility in the ordinary course of business. 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. 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. Moreover, we have, in this case, elsewhere acknowledged that Putnam County is exempt from Commission regulation, pursuant to Section 367.022(2), Florida Statutes, and Rule 25-30.090(6), Florida Administrative Code.

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. Since Putnam County is exempt from our regulation, no regulatory assessment fees will be owing from the date the County was appointed receiver for PBV, March 27, 1995.

In Order No. PSC-94-1464-FOF-WU, we affirmed LEI's responsibility to pay the utility's delinquent 1992 and 1993 regulatory assessment fees. That order was issued on November 29, 1994, before WSI filed notice of LEI's abandonment with the Commission on December 21, 1994. Thus, we find it appropriate to once again affirm our decision that LEI shall be responsible for paying the utility's delinquent 1992 and 1993 regulatory assessment fees, together with penalties and interest. LEI shall be required to remit payment within 60 days of the effective date of this order. Furthermore, if these fees, with attendant penalties and interest, are not fully paid upon reasonable collection efforts, the matter shall be referred to the Comptroller's Office for disposition.

DOCKET STATUS

This docket, Docket No. 940974-WU, was opened to process the utility's application for a staff-assisted rate case and was placed in abeyance by Order No. PSC-95-0429-FOF-WU, pending the appointment of a receiver for the utility and the receiver's decision to proceed with the staff-assisted rate case, or not. Since we have acknowledged Putnam County's exemption from our

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regulation, pursuant to Section 367.0814(6), Florida Statutes, the utility's staff-assisted rate case is deemed to be withdrawn.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that Landis Enterprises, Inc., shall be responsible for paying the regulatory assessment fees of Port Buena Vista Water System for 1992 and 1993, together with applicable penalties and interest, within 60 days of the effective date of this order. It is further

ORDERED that if Landis Enterprises, Inc., fails to remit full payment upon ordinary collection efforts, the matter shall be referred to the Comptroller's Office for disposition. 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 17th day of July, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Meyer
Chief, Bureau of Records

(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 1992 and 1993 regulatory assessment fees 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 7, 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.

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

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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.