

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff- ) DOCKET NO. 950515-WS  
assisted rate case in Martin ) ORDER NO. PSC-97-0105-FOF-WS  
County by Laniger Enterprises of ) ISSUED: January 27, 1997  
America, Inc. )  
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The following Commissioners participated in the disposition of this matter:

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

ORDER GRANTING EXTENSION OF TIME  
TO COMPLETE PRO FORMA IMPROVEMENTS

AND

NOTICE OF PROPOSED AGENCY ACTION APPROVING  
SETTLEMENT AGREEMENT AND REQUIRING REFUNDS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein, regarding the requirement for refund and the approving of the settlement agreement, 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

Laniger Enterprises of America, Inc. is a Class C water and wastewater utility. The utility was first organized in 1972, and certificated by the Commission in 1982. By Order No. 11423, issued on December 15, 1982, the Commission issued Certificates Nos. 362-W and 317-S to Environmental Concern, Ltd. Martin County claims that the area granted in those certificates is the same area that is the subject of the Planned Unit Development Zoning Agreement.

However, after several transfers, Reginald Burge and Lois Burge bought the utility, along with over \$1,000,000 in residential property from Chicago Title. Reginald and Lois Burge then applied for transfer of the utility to Laniger Enterprises of America, Inc. (Laniger or utility), and this was approved by Order No. 22203.

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FPSC-RECORDS/REPORTING

Martin County has taken issue with Mr. Burge splitting ownership of the utility and residential property between Laniger and the Beacon 21 Development.

The utility's service area is located in Jensen Beach, Florida, and the utility provides service on a flat rate basis to 276 water customers and 524 wastewater customers. The service area includes condominium style developments known as Beacon 21 (276 water and wastewater customers), and River Club (192 wastewater customers). The utility also serves a mobile home park known as Palm Circle (56 wastewater customers).

The utility applied for a staff-assisted rate case (SARC) on May 4, 1995. The test year for setting rates was the historical average twelve-month period ending June 30, 1995. During the processing of this SARC, the utility apprised our staff of problems it was experiencing with unauthorized connections used for irrigation. The activities of these unauthorized connections caused serious injury to the utility during the test year in that it sustained line breaks and damage to the lines, thus causing loss of water and hindering the utility's ability to provide efficient service to its customers. The utility does have some authorized irrigation connections; however, it does not charge these customers for service. The water used for irrigation and lost during line breaks, along with other extraordinary incidents the utility experienced during the test year, accounted for over 50% of test year consumption.

Included in the utility's original pro forma plans were irrigation meters; however, after the customer meeting, the customers, through their attorney, notified our staff and the utility of their intent to disconnect their irrigation connections and provide for their irrigation needs by constructing their own wells. As a result of the customers' representations, in Proposed Agency Action (PAA) Orders Nos. PSC-96-0629-FOF-WS and PSC-96-0629A-FOF-WS (hereinafter "SARC Orders"), we both removed the irrigation customers from the utility's customer base, and reduced the utility's consumption by the estimated amount of flows from irrigation. In order to be consistent, we also reduced the used & useful percentage, calculated contributions-in-aid-of-construction (CIAC) on the margin reserve and established service availability charges. These orders also allowed for many pro forma adjustments, but required that the pro forma additions be completed by December of 1996.

Since the issuance of those orders, we have learned that the customers were unable to obtain permits for wells and that the utility was unable to disconnect irrigation service without

disconnecting residential service. Apparently, the irrigation lines are service lines on the customer's side connected to main lines that service the buildings. After the first PAA order became final, but before the amendatory order became final, the utility began billing the customers for approximately 36 irrigation service connections and plant capacity charges.

On June 26, 1996, the customers filed a petition disputing the utility's application of the general service rates granted in the amendatory order and requesting that the Order be clarified. In filing the petition, the customers have refused to pay the plant capacity charges as well as some of the irrigation charges.

Before the petition was filed, the utility had been working with a customer representative to restore a customer utility relationship. At the time of the petition, both sides thought it possible to negotiate and reach a settlement; however, because the two sides could not agree on the number of irrigation connections, our staff offered its assistance.

On September 18, 1996, and again on November 4, 1996, our staff traveled to the utility's service area and met with utility and customer representatives. The purpose of these informal meetings was to: identify irrigation connections; establish a consensus on the actual number, location and billing for these connections; and discuss meter sizes and installations.

At the November 4, 1996, meeting, negotiations began toward a settlement of the value of unmetered water use for irrigation for the period from June to December 31, 1996. Representing 260 of the 276 unit owners, the customers' legal representative, by letter dated December 11, 1996, finally offered to pay \$7,200 for the six-month period ending December 31, 1996. This amount equates to \$1,200 per month at a cost of \$4.62 per customer. This amount was to be reduced by whatever dollar amount that had already been paid by the customers for irrigation connections. The customers also requested that we evaluate the revenues that will be produced for irrigation water, to determine if the rate of return is consistent with the rate approved in the most recent rate case. By letter dated December 13, 1996, the utility accepted the offer.

Also, on December 12, 1996, Laniger filed its Request for Extension Of Time To Complete Pro Forma Plant Additions. This order addresses the settlement agreement and the utility's request for an extension of time in which to complete its pro forma plant additions.

SETTLEMENT AGREEMENT

As stated above, prior to the issuance of the SARC Orders, the customers represented that they would no longer require irrigation service from the utility, and would disconnect their irrigation lines. Therefore, the SARC orders established Phase I flat rates and Phase II metered rates to be implemented after the pro forma plant additions were completed, without a rate for irrigation service.

However, when the customers discovered that they could not obtain permitting for their own irrigation wells, they continued to use irrigation service from the utility and agreed that the utility was entitled to additional compensation for this service. Also, because of the layout of the irrigation service lines, the utility could not disconnect the irrigation service without disconnecting service to the residential units. When the customers did not disconnect their irrigation lines, the utility began billing the customers for 36 additional general service rates for irrigation, and, also, billed them for service availability fees.

On June 26, 1996, the customers filed a petition disputing the utility's application of the general service rates granted in Order No. PSC-0629A-FOF-WS and requested that the order be clarified. Based on this dispute, the customers have refused to pay the plant capacity charges as well as some of the irrigation charges. In this petition, the attorney represents all of the sub-homeowner associations located at Beacon 21 except for Manatee.

While this petition was pending, the parties agreed to a total settlement of the appropriate charge for the irrigation service. By this agreement, the two sides have agreed that:

1. The 260 customers represented in the negotiations would pay \$1,200 per month for the six-month period ending December 31, 1996, for a total of \$7,200. The per unit charge is \$4.62. This amount would be reduced by whatever dollar amount has already been paid by the owners;
2. The associations will be responsible for crediting the individual owners;
3. The service availability charges will not apply to irrigation connections;

4. The offer is a complete resolution of all the issues between the parties; and
5. The offer is contingent on the utility's guarantee that the irrigation meters will be in place by January 1, 1997.

As a part of this agreement, the utility has agreed to "sub-meter" all irrigation connections. It is estimated that there are approximately thirty of these connections. Six are directly attached to the utility's distribution main, and twenty-four are tied to the customers' residential service connections. The customers agreed to pay for all irrigation meters and costs related to installation. The utility agreed to be responsible for reading and maintaining those meters, but not for maintaining the customers' lines up to the meters. Although residential service connections are to be metered, sub-meters for irrigation usage are economically necessary so that customers will not incur wastewater charges for irrigation usage. The parties also agreed that final rates will be based on meter sizes for irrigation and other general service connections, such as the recreation areas.

The utility's current billing process is to bill the property manager for the individual buildings/associations; in turn, the associations pay the management company and the company pays the utility with one check. During the Phase I rates, the utility should have billed 16 general service connections at the flat rate of \$96.80 each; however, it billed for 52 connections, 50 of which serve customers represented in the negotiations. Any amount paid in excess of the 16 connections for any of the 50 connections shall be netted against the \$1,200 per month settlement. According to the settlement, the customers are accepting the responsibility of crediting the appropriate owners.

Whereas the utility has agreed to have the meters in place by the end of December, it is the customers' responsibility to install all of the irrigation meters. The utility's responsibility is to order all meters, residential and irrigation, and install the residential building meters. Once all meters are installed and the utility has submitted and has had approved revised tariff sheets reflecting the rates approved in Order No. PSC-0629A-FOF-WS, the utility may charge metered rates. The utility may not bill customers for usage until all irrigation meters have been installed; all meter installations, residential and irrigation, must be completed.

Upon review of the proposed agreement, we find it to be reasonable. Based on our adjustments to flows and revenues in consideration of irrigation service, these additional revenues represent a fair, just and reasonable estimate of the additional costs associated with providing irrigation service. As in any case where the utility has had a dramatic change in rate structure, it is difficult to ascertain the impact to the utility's earnings; however, in order to monitor the utility's earnings, the utility shall be required to submit a report containing revenue and consumption information for the first six months January 1 through June 30, 1997, by August 15, 1997. Based on the above, the settlement agreement shall be approved.

#### REFUND REQUIREMENT

Although the homeowner association of Manatee was not represented in these negotiations, Manatee shall also be charged a per unit rate of \$4.62 per month for the period of June 1 through December 31, 1996. This represents a reduction from what Manatee has already paid, and the utility shall credit the customer accounts on a monthly basis over a period of six months and include interest in accordance with Rule 25-30.360, Florida Administrative Code. The utility shall provide our staff with proof of the customer credits on a monthly basis beginning with the first billing period after the issuance of this Order.

#### EXTENSION OF TIME

Order No. PSC-96-0629-FOF-WS, issued on May 10, 1996, required the utility to complete certain pro forma plant additions within six months of the issuance of that order. These improvements totaled \$151,379 for water and \$29,708 for wastewater. Not all of the improvements have been completed within the time frame specified in that order. In a motion dated December 12, 1996, the utility requested an extension of time to complete the remaining items. That petition stated that the delay in the completion of some of the pro forma additions was due to the lack of funds, and uncertainty as to the effect of a formal protest resulting from the issuance of an amendatory order.

The utility indicated that it suffered a loss of revenue since the majority of the condominium association customers refused to pay for irrigation service. In addition, it incurred the expense of replacing a well pump that burned out due to excessive irrigation demand. In reference to the protest, the utility claimed that there existed a period of uncertainty after the filing of the customer petition discussed above and its effect on Orders Nos. PSC-96-0629-FOF-WS and PSC-96-0629A-FOF-WS.

Of the 19 pro forma plant additions required in Order No. PSC-96-0629-FOF-WS, 7 are not completed. The utility has estimated that all of the remaining incomplete projects will be completed no later than the end of February, 1997. In view of the reasons stated above, we find that the utility's request for an extension is appropriate and the utility shall be given up to and including February 28, 1997, to complete the pro forma additions.

Based on the above, this docket shall remain open until March 28, 1997, to allow the utility time to complete the pro forma plant additions, and to give our staff engineer time to verify these additions. After the utility has complied with the SARC Orders, and has submitted and has had approved revised tariff sheets reflecting the final rates, this docket shall be closed administratively. However, if the utility fails to timely complete the aforementioned pro forma additions, we shall take further action as deemed appropriate.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Request for Extension of Time to Complete Pro Forma Plant Additions filed by Laniger Enterprises of America, Inc., shall be granted and the utility shall be given up to and including February 28, 1997, to complete the pro forma plant additions. It is further

ORDERED that the provisions of this Order approving the settlement agreement and requiring refunds, issued as proposed agency action, shall become final and effective unless an appropriate petition from a substantially affected person, and 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 the proposed settlement agreement between Laniger Enterprises of America, Inc., and the customers is approved, as set forth in the body of this Order. It is further

ORDERED that Laniger Enterprises of America, Inc., shall submit a report by August 15, 1997, containing revenue and consumption information for the first six months of 1997. It is further

ORDERED that the customers in the Manatee Homeowners Association shall be entitled to a refund with interest in

ORDER NO. PSC-97-0105-FOF-WS  
DOCKET NO. 950515-WS  
PAGE 8

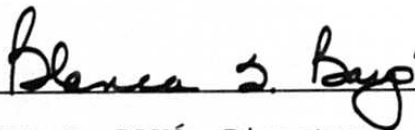
accordance with Rule 25-30.360, Florida Administrative Code, as set forth in the body of this Order. It is further

ORDERED that Laniger Enterprises of America, Inc., shall provide our staff with proof of the customer credits on a monthly basis beginning with the first billing period after the issuance of this Order.

ORDERED that this docket shall remain open until March 28, 1997, pending our staff's verification that the pro forma plant additions have been completed. It is further

ORDERED that upon Laniger Enterprises of America, Inc., completion of the pro forma plant additions, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission, this 27th day of January, 1997.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 concerning approval of the settlement agreement and refunds 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, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 17, 1997. 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 Records and Reporting within fifteen (15) days of the issuance of

ORDER NO. PSC-97-0105-FOF-WS  
DOCKET NO. 950515-WS  
PAGE 10

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.