

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval to defer legal expenses associated with the resolution of land use issues for utility treatment facilities that are located in Polk County by West Lakeland Wastewater, Inc.

DOCKET NO. 150137-SU  
ORDER NO. PSC-16-0030-PAA-SU  
ISSUED: January 19, 2016

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
RONALD A. BRISÉ  
JIMMY PATRONIS

NOTICE OF PROPOSED AGENCY ACTION  
ORDER DEFERRING WEST LAKELAND WASTEWATER, INC.'S  
LEGAL EXPENSES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein approving the deferral of legal expenses 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 (F.A.C.).

BACKGROUND

West Lakeland Wastewater, Inc. (West Lakeland or utility) is a Class C wastewater utility that serves approximately 302 customers in Polk County. Water service is provided by the City of Lakeland. According to West Lakeland's 2014 annual report, total gross revenues were \$116,063 and total operating expenses were \$120,000, resulting in a net loss of \$3,937.

By letter dated March 26, 2009, West Lakeland gave notice of abandonment effective June 30, 2009. On May 13, 2009, the Polk County Attorney filed a Petition for Appointment of Receiver for West Lakeland in the Circuit Court of the Tenth Judicial Circuit (Circuit Court). The Circuit Court appointed Mr. Mike Smallridge as receiver for the wastewater system. On September 8, 2009, this Commission acknowledged West Lakeland's abandonment and the Court's appointment of Mr. Smallridge as receiver.<sup>1</sup>

---

<sup>1</sup> Order No. PSC-09-0607-FOF-SU as amended by PSC-09-0607A-FOF-SU, issued February 16, 2010, in Docket No. 090154-SU, In re: Notice of abandonment of wastewater system for The Village of Lakeland Mobile Home Park in Polk County, by West Lakeland Wastewater, Inc.

On March 3, 2013, Mr. Smallridge sent a letter requesting that a docket be opened to transfer Certificate No. 515-S from West Lakeland, Inc. to West Lakeland Wastewater, LLC. This application was withdrawn by the utility in a letter dated September 11, 2014. On April 29, 2015, West Lakeland filed a letter requesting the deferral of legal expenses and other costs associated with the resolution of land rights issues involving the utility's ponds and spray fields and amortization of these expenses over three years. The total legal costs to date associated with this litigation are \$6,245. We have jurisdiction in this case pursuant to Section 367.011, Florida Statutes.

### DECISION

The 2013 transfer application was withdrawn because the utility did not own or have a long-term lease for the land on which the ponds and spray fields are located. Rule 25-30.037(2)(Q), F.A.C., requires "evidence that the utility owns the land upon which the utility treatment facilities are located, or a copy of an agreement which provides for the continued use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative."

The concept of deferral accounting allows companies to defer costs due to events beyond their control and seek recovery through rates at a later time. The alternative would be for the company to seek a rate case each time it experiences an exogenous event. The costs in the instant docket relate to legal fees incurred by the utility in trying to resolve the land rights issues involving the utility's ponds and spray fields. Since this situation is still ongoing, allowing recovery of a regulatory asset is not possible at this time. Upon completion of a fully executed easement, long-term lease, or purchase of the land, we can determine the appropriate accounting and recovery methodology for these costs. Therefore, we approve West Lakeland's request to defer the legal fees associated with the resolution of land rights issues involving the utility's ponds and spray fields pending a final determination of whether any prudent costs incurred should be capitalized, amortized, or expensed.

In Docket Nos. 140174-WU and 140176-WU, we imposed conditions on any new purchases of Commission-regulated utilities by Mr. Smallridge.<sup>2</sup> Condition number 5 states, "If Michael Smallridge purchases, either directly or indirectly, any other Commission-regulated utilities prior to December 31, 2017, an application for transfer shall be submitted within 90 days of such purchase." Despite the fact that Mr. Smallridge was already appointed receiver of West Lakeland when the Commission rendered its decision, we find that the underlying reasons for this condition apply in this case. Therefore, Mr. Smallridge shall be required to file for a transfer of West Lakeland's certificate within 90 days from the date the utility resolves the land rights issues involving the utility's ponds and spray fields.

---

<sup>2</sup> Order No. PSC-15-0420-PAA-WU, issued October 5, 2015, in Docket No. 140174-WU, In re: Notice of Proposed Agency Action Order approving transfer of Certificate No. 117-W and setting new book value for transfer purposes; and Order No. PSC-15-0422-PAA-WU, issued October 6, 2015, in Docket No. 140176-WU, In re: Notice of Proposed Agency Action Order approving transfer of Certificate No. 116-W and setting new book value for transfer purposes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that West Lakeland Wastewater, Inc.'s request to defer the legal fees associated with the resolution of land rights issues involving the utility's ponds and spray fields pending a final determination of whether any prudent costs incurred should be capitalized, amortized, or expensed is hereby granted. It is further

ORDERED that West Lakeland Wastewater, Inc. shall file a transfer application within 90 days from the date that the utility resolves the land rights issues involving the utility's ponds and spray fields. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective and this docket closed upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

By ORDER of the Florida Public Service Commission this 19th day of January, 2016.



CARLOTTA S. STAUFFER  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
[www.floridapsc.com](http://www.floridapsc.com)

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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 approving deferral of the legal fees associated with the resolution of land rights issues involving the utility's ponds and spray fields is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on February 9, 2016. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

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.

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 Office of Commission Clerk, 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 Office of Commission Clerk 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.