

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of ) DOCKET NO. 881500-WS  
Certificates Nos. 362-W and 317-S from ) ORDER NO. 22203  
BEACON TWENTY-ONE DEVELOPMENT CORP- ) ISSUED: 11-21-89  
ORATION to LANIGER ENTERPRISES OF )  
AMERICA, INC. in Martin County )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman  
THOMAS M. BEARD  
BETTY EASLEY  
GERALD L. GUNTER  
JOHN T. HERNDON

ORDER APPROVING TRANSFER AND REQUIRING  
CONTINUED USE OF APPROVED RATES AND CHARGES

AND

NOTICE OF PROPOSED AGENCY ACTION  
ORDER ESTABLISHING RATE BASE

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action establishing rate base discussed herein 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.

CASE BACKGROUND

Beacon Twenty-One Development Corporation (Beacon) is a Class C water and wastewater utility near the city of Stuart, in Martin County. Until 1987, Beacon's principal owner and operating officer was Jeffrey M. Mart. In July, 1987, the utility was placed in the hands of Mr. William Orazi, a bankruptcy trustee, as a result of financial insolvency caused by the alleged fraudulent activities of Mr. Mart.

DOCUMENT NUMBER-DATE

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REG. RECORDS (REPORTING)

On June 28, 1988, Mr. Orazi issued a quit claim deed on the utility property in favor of Chicago Title. On August 15, 1988, Chicago Title sold the utility, along with over \$1,000,000 in residential property, to Reginald J. and Lois F. Burge, subject to the outcome of a suit by a condominium association served by the utility, which argued that it should own the utility. On November 14, 1988, the Circuit Court dismissed the association's suit and the Burges' began operating the system. The Burges' subsequently transferred the utility to Laniger Enterprises of America, Inc. (Laniger), a corporation in which the Burges' are the majority shareholders.

On October 24, 31, and November 7, 1988, the Burges published notice of their intent to apply for a transfer of Certificate Nos. 362-W and 317-S from Beacon 21 to Laniger. By letter dated November 2, 1988, Charles and Pauline Mosony, customers of the utility, objected to the proposed transfer. On March 20, 1989, Mr. Mosony informed this Commission that they had moved and no longer had any interest in, or objection to, the transfer. By Order No. 21004, issued April 7, 1989, we acknowledged the withdrawal of the Mosonys' objection.

#### APPLICATION FOR TRANSFER

On January 11, 1989, Laniger applied for a transfer of Certificates Nos. 362-W and 317-S and the utility assets. The application is in compliance with Section 367.071, Florida Statutes, and Rules 25-30.030 through 25-30.040, Florida Administrative Code. In particular the notarized application contains:

- a) A check in the amount of \$300.00 which, upon calculation, equates to the correct filing fee as prescribed by Section 367.141, Florida Statutes;
- b) A legal description, in accordance with Rule 25-30.035, Florida Administrative Code, which is appended as Attachment A;
- c) Proof of notice to all customers of record, as required by Rule 25-30.030(g), Florida Administrative Code;

d) Proof of notice to all interested governmental and regulatory agencies, all utilities within a four mile radius of the territory to be served, and proof of advertisement in a newspaper of general circulation in Martin County, as prescribed by Rule 25-30.030, Florida Administrative Code.

As discussed above, one objection to the transfer was filed but was subsequently withdrawn. The time period for the filing of any further objections has long since expired.

The utility is currently under a consent order by the Department of Environmental Regulation (DER). However, since acquiring the utility, Laniger has made a number of improvements in an attempt to bring the utility into compliance with DER requirements. Laniger states that it is interested in bringing the systems into compliance in order that it may develop portions of the service area. In addition, we are informed that the utility has operated without a wastewater operations permit since 1985. DER is currently processing an application for such an operations permit.

Since the buyer appears to be financially able to make the necessary improvements, and appears to be interested in providing quality service, we find that the transfer is in the public interest. Accordingly, we hereby approve the transfer of Certificates No. 362-W and 317-S and the utility assets from Beacon to Laniger for the currently certificated area as described in Attachment A.

#### RATE BASE

Our calculations of rate base are attached as Schedules Nos. 1 for water and 2 for wastewater, respectively. These calculations do not include any ratemaking adjustments normally performed in rate cases, such as used and useful adjustments or working capital calculations. The rate base calculations are solely for the purpose of establishing the net book value of the property being transferred.

Through the course of this case, we have determined that there were no utility records available for any period prior to August, 1987, when the utility went into receivership.

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According to the information that is available, no additions were made between January 1, 1981 and August, 1987. Accordingly, we have calculated rate base beginning with the levels established in Order No. 12187, issued July 1, 1983, by which we approved the transfer of this utility to Beacon, and have updated these levels to August 15, 1988, the date of the transfer.

According to the available records, a water pump was replaced in 1988 at a cost of \$5,803.67. We have, therefore, included this amount in water plant in service and removed \$3,500, the estimated cost of the old pump.

During the time the utility was in receivership, the wastewater system was converted from contact stabilization to extended air, at a cost of \$4,726.33. Accordingly, we have included this amount in utility plant in service for the wastewater system.

We have also updated accumulated depreciation and amortization of CIAC based upon the composite depreciation rate of 2.5 percent, the rate established in the utility's last rate case, as reflected by Order No. 11423, issued December 15, 1982.

Also by Order No. 11423, we determined that the utility did not recognize CIAC in the water division. CIAC was recognized in the wastewater division only to the extent that certain developers contributed funds for the expansion of the wastewater system. No connection fees were collected nor were any charges approved for the utility. We, therefore, directed the utility to require future expansions of the water and wastewater systems to be funded by contributions from developers. No expansions to the systems have been made since that time. Accordingly, there has been no change in the level of CIAC for either the water or the wastewater systems.

#### Acquisition Adjustment

An acquisition adjustment results when the purchase price of a utility differs from rate base at the time of transfer. The applicant purchased this utility for \$160,705. Since the combined water and wastewater rate base is \$256,022, there is a

negative acquisition adjustment of \$95,317. In its application, Laniger requested a positive acquisition adjustment. It stated that the "rate base is too low to generate enough capital to make the repairs to the plant . . . and maintain and operate the plant so that it does not become in a deteriorated condition again." It appears that Laniger misunderstood the nature of an acquisition adjustment when it made its request. In any event, since it did not purchase this utility at a premium, there is no positive acquisition adjustment to recognize.

As for the negative acquisition adjustment, this Commission's practice has been to disregard any acquisition adjustment for regulatory purposes, whether positive or negative, unless it is shown that extraordinary circumstances warrant our recognition of the adjustment and that it is in the best interests of the customers to recognize the adjustment. No such showing has been made. Accordingly, we decline to recognize the negative acquisition adjustment for regulatory purposes.

Based upon the utility's application and our decisions above, we find that the appropriate levels of rate base, as of August 15, 1988, the date of the transfer, are \$113,172 for the water system and \$142,850 for the wastewater system.

#### RATES AND CHARGES

Under Rule 25-9.044(1), Florida Administrative Code,

In case of change of ownership or control of a utility which places the operation under a different or new utility . . . the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the Commission) . . .

The utility's current rates, established by this Commission by Order No. 11423, are a \$12.23 flat rate per month per unit for water service and a \$11.40 flat rate per month per unit for wastewater service. Also by Order No. 11423, we required any further expansion of the water or wastewater systems to be funded by developer contributions. We have determined that the

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wastewater system is currently 81 percent contributed and that, as a whole, the utility is 56.8 percent contributed. If the utility filed for a service availability case, it would probably result in a charge for water customers and no charge for wastewater customers due to the current contribution level of the wastewater system. However, since all water customers are wastewater customers, we see no harm in retaining the utility's current service availability policy.

Based upon the foregoing discussion, we find no reason to change the rates and service availability policies at this time. Accordingly, the utility shall continue to use the rates and charges previously approved for this utility.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer from Beacon Twenty-One Development Corporation to Laniger Enterprises of America, Inc. is hereby approved. It is further

ORDERED that Laniger Enterprises of America, Inc. shall continue to use the rates and charges approved for Beacon Twenty-One Development Corporation, pursuant to Rule 25-9.944, Florida Administrative Code. It is further

ORDERED that the remaining provisions of this Order are issued as proposed agency action and will become final unless an appropriate petition is received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that the appropriate levels of rate base as of August 15, 1988, the date of the transfer, are \$113,172 for water and \$142,850 for wastewater, as reflected by Schedules Nos. 1 and 2. It is further

ORDERED that any acquisition adjustment engendered by the transfer shall be disregarded for ratemaking purposes. It is further



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ORDERED that Laniger Enterprises of America, Inc. shall file revised tariff pages reflective of the change in ownership no later than twenty (20) days following the effective date of this Order.

By ORDER of the Florida Public Service Commission  
this 21st day of November, 1989.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

RJP

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 establishing rate base proposed herein 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

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Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on December 12, 1989. 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, and as reflected in a subsequent 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.

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 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 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 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.



ATTACHMENT A

CERTIFICATION TERRITORY

The legal description for the territory to be served is described as being in Martin County, and further as:

TOWNSHIP 37 South, RANGE 41 East,

Section 27

That part of the Southwest 1/4 lying South of the Florida East Coast Railway

AND

the West 330 feet of the Eastern 1/2 of said Section 27

EXCEPT

the Southern 330 feet of the Southeast 1/4 of the Southwest 1/4 and the Southern 330 feet of the Southwest 1/4 of the Southeast 1/4 and the Southwest 1/4 of the Southwest 1/4 of the Southwest 1/4 of the Southwest 1/4 of said Section 27.

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BEACON 21 DEVELOPMENT CORPORATION  
TRANSFER TO LANIGER ENTERPRISES OF AMERICA, INC.  
SCHEDULE OF WATER RATE BASE

Schedule 1

Description	Balance Per Commission
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Utility Plant in Service	\$145,235
Land	5,000
Accumulated Depreciation	(37,063)
CIAC	0
CIAC Amortization	0
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TOTAL	\$113,172
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BEACON 21 DEVELOPMENT CORPORATION  
TRANSFER TO LANIGER ENTERPRISES OF AMERICA, INC.  
SCHEDULE OF WASTEWATER RATE BASE

Schedule 2

Description	Balance Per Commission
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Utility Plant in Service	\$339,239
Land	94,580
Accumulated Depreciation	(85,395)
CIAC	(260,757)
CIAC Amortization	55,183
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TOTAL	\$142,850
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