

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice by K. S. OPERATIONS, )	DOCKET NO. 900795-SU
INC. of abandonment of sewer system )	ORDER NO. 24131
in Lee County )	ISSUED: 2-18-91
_____)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 BETTY EASLEY  
 FRANK S. MESSERSMITH  
 MICHAEL MCK. WILSON

ORDER ACKNOWLEDGING TRANSFER OF UTILITY  
TO GOVERNMENTAL AUTHORITY AND  
CANCELLING CERTIFICATE

BY THE COMMISSION:

K. S. Operations, Inc. (KS Ops or utility) received its Certificate No. 350-S as the result of a transfer from Kelly Brooke, Ltd., pursuant to Order No. 16769 issued October 24, 1986, in Docket No. 850965-SU. Kelly Brooke, Ltd. received the original certificate in 1984. According to its annual report filed for calendar year 1989, KS Ops was a Class "C" utility serving 224 customers. KS Ops provided wastewater collection, treatment and disposal service to a small service area in Lee County until the county began to provide treatment and disposal service in February, 1990.

The Commission did not become aware that KS Ops had ceased its operation until we received an inquiry in July, 1990, from one of its condominium customers, Casa Bella Condominium Association, Inc., (Casa Bella), concerning responsibility for a lift station. Based upon the Commission's inquiry to KS Ops on August 8, 1990, a letter was received, dated August 17, 1990, indicating KS Ops' desire to have its certificate canceled. The utility also filed a notice of abandonment on October 1, 1990.

EOS, Inc. (EOS) is a contract operator that provided service to KS Ops until February, 1990. During February, 1990, the utility service provided by KS Ops was taken over by Lee County regional wastewater treatment facility. We are informed that prior to the take over by Lee County, EOS advised KS Ops that two lift station pumps needed to be repaired. KS Ops advised EOS that KS Ops did not have to repair the lift station pumps because that responsibility had shifted to Lee County.

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EOS installed one of its own pumps in the pumping station during June, 1990. In July the pumps failed and EOS installed two new pumps. Casa Bella paid \$1,100 to EOS for the pumps because the Association had no viable alternative since the failed pumping station posed a possible health hazard. We could find no evidence that the Department of Environmental Regulation or any other governmental authority was made aware of the discrepant pump situation.

In a letter dated July 19, 1990, the Commission staff made an inquiry concerning the status of certificate cancellation pursuant to Section 367.071, Florida Statutes. In his response dated July 24, 1990, the utility owner indicated that KS Ops ceased operations in February, 1990. On August 8, 1990, in a letter to the utility, staff informed KS Ops that it had failed to file an application with the Commission to have its certificate canceled. In a letter dated August 14, 1990, staff sent the utility an application package for approval to transfer KS Ops to a government authority. A complete application was returned on August 31, 1990.

During September, we interacted with Lee County officials to determine what, if any, documentation or written agreements existed concerning the transfer of KS Ops to Lee County. No written documentation concerning the transfer was found to exist. Our investigation determined that there were some misunderstandings between Lee County and KS Ops as to precisely what was being taken over by the County and what was not. The County apparently did not desire to take responsibility for KS Ops' two lift stations and the collection system in the service territory previously served by KS Ops. KS Ops, on the other hand, believed that Lee County had taken over responsibility for the entire facilities, including all collection and lift station facilities. The Commission staff mailed a letter to KS Ops on September 6, 1990, discussing the requirement to file for Commission approval of the transfer of the utility to a governmental authority.

Lee County attempted to work out a solution to the lift station and collection system problems with KS Ops in a letter of September 25, 1990. However, on October 1, 1990, the utility submitted a notice of abandonment to the Commission. The abandonment actually involved only the collection and pumping portion of KS Ops' entire system.

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Subsequently to the notice of abandonment, Lee County passed a resolution to take over the lift station and the collection system.

Although KS Ops ceased to operate during February 1990, it made no attempt to comply with Section 367.071, Florida Statutes, until mid August and then only after an inquiry from the Commission. Nearly seven months had elapsed between the time the utility ceased operations and the time it finally indicated to the Commission its intent to cancel its certificate. Rather than attempt to cooperate in an orderly transition, the utility has refused to reimburse Casa Bella for the \$1,100 it spent to replace and repair two pumps in the lift station. The utility abandoned some of its facilities to the detriment of its former customers, and has refused to cooperate with Lee County to effect repairs to the collection system and to render the system suitable for transfer to Lee County. Section 367.165, Florida Statutes, addresses abandonment of facilities. The utility's petition to abandon its facility appears to have been a legal expediency. We have been informed that Casa Bella would send the bill for the \$1,100 to Lee County for reimbursement.

Section 367.071, Florida Statutes, states that the sale or transfer of a certificate to a governmental agency shall be approved as a matter of right. However, until the transfer is approved, the utility is responsible for its system. We find that KS Ops was responsible for maintenance of the lift station until our approval of the transfer to Lee County.

We do not believe that it is necessary to issue an order to show cause to KS Ops even though the utility failed to comply with Section 367.071, Florida Statutes, because there was sufficient doubt as to who was responsible for the lift station and there was no written contract or agreement between KS Ops and Lee County that could be relied upon to determine responsibility.

KS Ops alleges that it does not have possession of Certificate No. 350-S, therefore, no need exists to order its return to the Commission.

Although we found an indication in KS Ops' 1989 annual report that customer deposits were held by KS Ops, further investigation discovered that no customer deposits remain to be returned to the customers. Finally, we find that any regulatory assessment fees

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which may be owed will be billed by the Commission in the normal process.

Upon consideration of all of the above, we acknowledge transfer of the utility to Lee County. We also cancel Certificate No. 350-S and direct that this docket be closed upon payment of any outstanding regulatory assessment fees.

It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of K. S. Operations, Inc. to Lee County, Florida, is hereby acknowledged. It is further

ORDERED that Certificate No. 350-S is cancelled. It is further

ORDERED that this docket shall be closed upon the determination and payment of any regulatory assessment fees that may be due to this Commission.

By ORDER of the Florida Public Service Commission this 18th day of February, 1991.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

TCP

by: Kay Helms  
Chief, Bureau of Records

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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.

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.