

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Water) DOCKET NO. 920923-SU
and Wastewater Certificates in) ORDER NO. PSC-93-0914-FOF-SU
Highlands County by LANDMARK) ISSUED: June 16, 1993
ENTERPRISES, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON

ORDER TO SHOW CAUSE

BY THE COMMISSION:

Landmark Enterprises, Inc. (Landmark or utility), by letter dated December 31, 1985, was granted a landlord-tenant exemption to provide wastewater service in Highlands County, Florida, pursuant to Section 367.022(5), Florida Statutes. In its December 22, 1985, request for said exemption Landmark stated that it was preparing to construct apartments and a mobile home park and that the charges for sewage service would be non-specifically included in the rent. The utility was advised by this Commission that if there was any change in its status or method of service, the utility may become jurisdictional and require certification.

Early in 1992, we received a customer complaint that the utility was serving non-tenants, that it charged for its wastewater service, and that the utility had been both serving non-tenants and charging for wastewater services since its inception. An inquiry was instituted by this Commission to determine if the utility remained exempt. The inquiry revealed that the utility no longer qualified for a landlord-tenant exemption and was now jurisdictional.

On April 8, 1992, Staff notified the utility that it was necessary to file for a certificate to operate as a wastewater utility pursuant to Section 367.031, Florida Statutes, and was given until July 13, 1992 to do so. The utility failed to file by that date. After much discourse and effort by this Commission, Landmark finally submitted its application on September 11, 1992, but this application was replete with deficiencies.

DOCUMENT NUMBER-DATE

06466 JUN 16 8

FPSC-RECORDS/REPORTING

After the initial application was filed, the customer, who initially brought the utility to our attention, objected to the granting of a certificate to Landmark and a hearing was scheduled. Due to the objector's untimely death, on February 28, 1993, the hearing was cancelled and the certification process could be completed without delay. However, the utility had failed to correct its deficiencies. Repeated efforts have been made to have this utility correct its deficiencies, even to the extent that Landmark was warned that we may initiate show cause proceedings for violation of Section 367.031, Florida Statutes, should it not complete its application by May 3, 1993. Landmark has chosen to ignore this warning.

As of the date of our vote at the Agenda Conference, held on June 8, 1993, the utility has yet to complete its application for certification pursuant to Section 367.045, Florida Statutes and is operating without a certificate in violation of Section 367.031, Florida Statutes. Pursuant to Section 367.083, Florida Statutes, an official filing date has not been set since, among other things, we have not been provided with the affidavit of notice pursuant to Section 367.045(1) (a) and (e), Florida Statutes.

In consideration of the foregoing, it appears that Landmark has failed to comply with the requirements of Section 367.045, Florida Statutes, and is operating without a certificate in violation of Section 367.031, Florida Statutes. Therefore, we hereby order Landmark to show cause, in writing, within twenty days, why it should not be fined \$100 per day for each day it fails to comply with Sections 367.031 and 367.045, Florida Statutes, up to a maximum of \$5,000.

If the utility fails to respond to the show cause within twenty days of the issuance of this Order, the penalty of \$100 per day up to a maximum of \$5,000 shall be imposed without further action by this Commission. The failure of the utility to file a timely response to the show cause order shall both constitute an admission of the facts alleged and waive any right to a hearing.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that Landmark Enterprises, Inc., shall show cause within 20 days, in writing, why it should not be fined \$100 per day for each day up to a maximum of \$5,000 for its failure to comply with Sections 367.031 and 367.045, Florida Statutes, as described in this Order. It is further

ORDER NO. PSC-93-0914-FOF-SU
DOCKET NO. 920923-SU
PAGE 3

ORDERED Landmark Enterprises, Inc.'s written response must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida, 32399-0870, by the close of business on July 6, 1993. It is further

ORDERED that Landmark Enterprises, Inc.'s response to this Order must contain specific allegations of fact and law. It is further

ORDERED that Landmark Enterprises, Inc's opportunity to file a written response to this Order shall constitute its opportunity to be heard prior to final determination of noncompliance and assessment of penalty by this Commission. It is further

ORDERED that a failure to file a timely response to this Order shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

ORDERED that in the event that Landmark Enterprises, Inc., files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before a final determination on these matters is made. It is further

ORDERED that the docket should remain open pending completion of the show cause proceeding and the utility's application for a certificate.

By ORDER of the Florida Public Service Commission this 16th day of June, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SLE/MJF

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.

This order is preliminary, procedural or intermediate in nature. 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 25-22.037(1), 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 his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on July 6, 1993.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any 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.