

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for ) DOCKET NO. 920923-SU  
Wastewater Certificate in ) ORDER NO. PSC-93-1431-FOF-SU  
Highlands County by LANDMARK ) ISSUED: October 4, 1993  
ENTERPRISES, INC. )  
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The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK  
JULIA L. JOHNSON  
LUIS J. LAUREDO

FINAL ORDER GRANTING CERTIFICATE  
AND

PROPOSED AGENCY ACTION ORDER ESTABLISHING RATES AND CHARGES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein establishing rates and charges 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.

APPLICATION

Landmark Enterprises, Inc. (Landmark) is a Class C Utility located in Highlands County which provides wastewater service to approximately 243 residential customers and 9 general service customers. By letter dated December 31, 1985, Landmark was granted an exemption from Public Service Commission regulation pursuant to Section 367.022(5), Florida Statutes, as a landlord providing service to its tenants without specific compensation. Shortly thereafter, Landmark began charging for wastewater service.

In Docket 871326-SU, C & H Utilities (C & H) in Highlands County applied for an amendment of its certificate to include the territory served by Landmark. Because Highlands Utility Corporation (Highlands) believed that Landmark's territory was located within its certificated territory, Highlands objected to C & H's amendment application. According to Highlands' objection, the territory in question was granted to Highlands under grandfather rights in 1982. As a result of the objection, the

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application was withdrawn; however, Landmark continued to provide wastewater service to the territory without a certificate. In Order No. 19133, issued April 12, 1988, the Commission acknowledged that there was a question as to whether or not the territory was improperly included in Highlands' certificated territory; however, this dispute was never resolved.

In April of 1992, after receipt of a customer complaint regarding Landmark, we determined that Landmark was subject to our jurisdiction. We requested that Landmark file an application for an original certificate for a utility in existence pursuant to Section 367.045, Florida Statutes. Although Landmark ultimately filed its application, on September 11, 1992, it was incomplete. Landmark failed to correct the deficiencies or to provide pertinent information by which we could determine the rates and charges. In Order No. PSC-93-0914-FOF-SU, issued June 16, 1993, we ordered Landmark to show cause why it should not be fined \$100 per day up to \$5,000 for failure to comply with Sections 367.031 and 367.045, Florida Statutes. The utility filed a timely reply to the show cause order and submitted the necessary documentation to remove the deficiencies in its application and supplied the information necessary to make a determination of rates and charges.

Except as noted above, the application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for original certificate for an existing utility currently charging for service. The application contains a check in the amount of \$150, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The applicant has provided evidence in the form of a warranty deed that the utility owns the land upon which the utility's facilities are located as required by Rule 25-30.034(1)(e), Florida Administrative Code.

The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code, including notice to the customers in the proposed territory. An objection to the application was filed by Mr. Sam Corcoran, now deceased. However, after Mr. Corcoran's demise, his wife informed us that she did not intend to pursue the objection. No other objections to the notice of application have been received and the time for filing such has expired.

The current plant operator, Ted Long, has a Class "B" wastewater license and the president of Landmark, David Plank, has a Class "C" wastewater license. The utility has been providing wastewater service since the inception of the plant in 1985 without complaint, except for the objection filed by the late Mr. Sam Corcoran. However, on May 21, 1993, Landmark and the Department of Environmental Protection (DEP) entered into a Consent Order to resolve certain issues. According to the order, Landmark has violated several DEP rules regarding the operation of a wastewater treatment plant including achieved level of treatment. Landmark is operating currently without a permit. It has agreed to pay to the DEP a settlement of \$2,950.00 and an additional \$100.00 per day for each day it fails to comply with the Consent Order. At present, according to a representative from DEP, Landmark has not complied with any of the provisions of the Order, with the exception of hiring a professional engineer to design and construct the necessary plant upgrades. Therefore, we shall continue to monitor the progress of the engineer with respect to the improvements on the plant and the progress of the utility with respect to the operational permit and take whatever further action which may be warranted at a later date.

As support for financial viability, the utility provided an Income Statement and Balance Sheet which do not indicate a strong financial position. We acknowledge that the financial viability of the owner is questionable and the utility has not demonstrated the technical ability to operate the system with DEP standards; however, this utility has been providing service since 1985 and is presently the only utility willing to provide service.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.034(1)(h), (i) and (j), Florida Administrative Code. A description of the territory requested by the applicant is appended to this Order as Attachment A.

As previously mentioned, the territory which Landmark is requesting is located within the certificated territory of Highlands Utility Corporation (Highlands). Highlands, however, has never provided service to the territory. Further, Highlands has never provided notice of the application and has not objected to the certification of Landmark Enterprises. Therefore, based upon the foregoing, we are deleting the subject territory from Highlands' certificated territory.

Based on the above information, we find that it is in the public interest to grant Landmark's application for an original certificate. Accordingly, we find that Landmark Enterprises, Inc. is granted Wastewater Certificate No. 487-S to serve the territory described in Attachment A, appended to this Order.

RATES AND CHARGES

The utility's present rates and charges are as follows:

Residential Service

Flat Rate: \$11.00 per month  
Late Fee: \$2.00 or 1 1/2% whichever is greater

General Service

Minimum Charge: \$11.00 per month (includes 5.5 gallons)  
Gallonage Rate: \$2.00 per 1000 gallons over the minimum gallons allowed  
Late Fee: \$2.00 or 1 1/2% whichever is greater

Multi Residential Service

Flat Rate: \$10.00 per month per apartment  
Late Fee: \$2.00 or 1 1/2% whichever is greater

Miscellaneous Service Charges

Initial Connection Fee	\$15.00
Normal Reconnection Fee	15.00
Violation Reconnection Fee	Actual Cost
Premises Visit (in lieu of disconnection)	10.00

Service Availability Charges

Plant Capacity Charge	\$500.00
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The utility has filed a tariff which reflects the above rates and charges. The effective date of the tariff shall be the stamped approval date.

REGULATORY ASSESSMENT FEES

Pursuant to Rule 25-30.120(2), Florida Administrative Code, regulatory assessment fees are due from regulated utilities regardless of whether a certificate has been granted. Landmark has been subject to this Commission's jurisdiction since 1985 when it began charging for service. It was first advised of its responsibility to obtain a certificate on April 8, 1992. Consequently, the utility is required to remit regulatory assessment fees effective May 1, 1992. The utility shall file regulatory assessment fees for the period from May 1, 1992 through December 31, 1992, within sixty days of this order. In addition, so that this Commission may verify the regulatory assessment fees paid, the utility shall file a statement indicating the monthly revenue for the same period. Regulatory assessment fees and an annual report for 1993 will be due in March of 1994 pursuant to Rule 25-30.120 and Rule 25-30.110, Florida Administrative Code.

If a substantially affected person does not request a formal proceeding concerning the rates and charges established herein within twenty-one days of the issuance of this Order, this Order will become final and the docket shall be closed.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Landmark Enterprises, Inc. shall be granted Wastewater Certificate No. 487-S to serve the territory described in Attachment A. In addition, the territory shall be deleted from the certificated territory of Highlands Utility Corporation. It is further

ORDERED that the existing rates and charges as detailed in the staff analysis are approved. The effective date of the rates shall be the stamped approval date of the tariff. It is further

ORDERED that regulatory assessment fees for the period May 1 - December 31, 1992 shall be filed within sixty days of the date of the order. In addition, the utility shall file a statement indicating the monthly revenue for the same period. It is further

ORDERED that the provisions of the Order establishing rates and charges are issued as proposed agency action and shall become final unless an appropriate petition is received by the Director of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date set forth in the Notice of Further Judicial Proceedings or Judicial Review. It is further

ORDERED that if no timely objection is filed, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 4th day of October, 1993.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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by: Kay Flynn  
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Chief, Bureau of Records

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 rates and charges 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 his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on October 25, 1993. 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 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.

ATTACHMENT A

LANDMARK ENTERPRISES, INC.

TERRITORY DESCRIPTION

The following described lands located in portions of Section(s) 23 and 27, Township 34S, Range 28E, Highlands County, Florida:

Central Plaza: A strip office center located on lots 1 & 2, Block 1, Whispering Pines Subdivision, as recorded in Plat Book 5, Page 78, Highlands County, Florida. **Legal:** a portion of Section 23-34S-28E, Highlands County, Florida; being more particularly described as follows: Begin at the SE Corner of the SW 1/4 of Section 23-34S-28E; thence run S 88°-00'-58" W along the Southerly Section Line a distance of 188.97 feet; thence N 01°-06'-50" W a distance of 25 feet; thence N 19°-25'-45"W a distance of 658.48 feet for Point of Beginning (SW'yly Cor. of Project); thence continue N 19°-25'-45" W a distance of 264.42 feet (NW'yly Cor. of Project); thence S 88°-25'-29" E a distance of 210.12 feet to the Westerly right of way line of US Highway 27 (NE'yly Cor. of Project); thence S 19°-25'-45" E along the Westerly right of way line of US Highway 27 a distance of 26 feet to the Point of Curve right of way; thence along the arc Westerly right of way line a distance of 172.02 feet (Radius = 11,534.16 feet, Arc = 172.02 feet, Delta = 00°-51'-16" Easterly)(SE'yly Cor. of Project); thence S 70°-34'-15" W a distance of 201.28 feet to the Point of Beginning.

Red Pine Apartments: Six apartment complexes located on lots 10-21, Block 1, Whispering Pines subdivision, as recorded in Plat Book 5, Page 78, Highlands County, Florida. **Legal:** a portion of Section 23-34S-28E, Highlands County, Florida; being more particularly described as follows: begin at the SE Corner of the SW 1/4 of Section 23-34S-28E; thence run S 88°-00'-58" W along the Southerly Section Line a distance of 188.97 feet thence N 01°-06'-50" W a distance of 25 feet for Point of Beginning (SE'yly Cor of Project) thence N 19°-25'-45" W a distance of 922.90 feet (NE'yly Cor. of Project); thence N 88°-25'-29" W a distance of 131.32 feet (NW'yly Cor, of Project) thence S 19°-25'-45" E a distance of 921.53 feet (SW'yly Cor. of Project); thence N 88°-00'-58" E a distance of 131.70 feet to Point of Beginning.



Braelock Villas: An apartment complex. **Legal:** The Northerly 327 feet of the Westerly 690 feet of the NW 1/4 of the NE 1/4 of Section 27-34S-28E of Highlands County, Florida.

Thunderbird Hill South: A mobile home park as described in Plat Book 14, Page 46, Highlands County, Florida. **Legal:** A portion of Section 27-34S-28E, Highlands County, Florida; being more particularly described as follows: the NW 1/4 of the SE 1/4 of the NE 1/4 of Section 27-34S-28E, AND; the West 1/2 of the NE 1/4 of the SE 1/4 of the NE 1/4 of Section 27-34S-28E, AND; a portion of the South 1/2 of the NE 1/4 of the NE 1/4 of Section 27-34S-28E being more particularly described as follows: Begin at the SE Cor. of the SW 1/4 of the NE 1/4 of the NE 1/4; thence run N 00°-09'-57" W a distance of 330.82 feet; thence S 89°-56'-32" W for a distance of 250.00 feet; thence S 00°-09'-57" E a distance of 165.44 feet; thence S 89°-56'-04" W a distance of 411.76 feet; thence S 00°-08'-34" E a distance of 165.5 feet; thence N 89°-55'-36" E a distance of 661.83 feet to Point of Beginning.

Thunderbird Hill South, Unit II: A mobile home subdivision as described in Plat Book 15, Page 28, Highlands County, Florida. **Legal:** The E 1/2 of the SW 1/4 of the SE 1/4 of the NE 1/4 and the W 1/2 of the SE 1/4 of the SE 1/4 of the NE 1/4 of Section 27-34S-28E, Highlands County, Florida.

Thunderbird Manor Condominium: **Legal:** The Northerly 327 feet of the Easterly 633 feet of the NW 1/4 of the NE 1/4 of Section 27-34S-28E of Highlands County, Florida.

Vantage Point: A subdivision as described in Plat Book 15, Page 2, Highlands County, FL. **Legal:** The W 1/2 of the SW 1/4 of the NE 1/4 of Section 27-34S-28E, Highlands County, Florida.

Vantage Point Phase II: A subdivision as described in Plat Book 15, Page 86, Highlands County, Florida. **Legal:** The E 1/2 of the SE 1/4 of the NW 1/4 of Section 27-34S-28E, Highlands County, Florida.

Badcock Furniture: A commercial building located on lot 8, Block 1, Whispering Pines Subdivision, as recorded in Plat Book 5, Page 78, Highlands County, FL. **Legal:** a portion of Section 23-34S-28E, Highlands County, FL; being more particularly described as follows: Begin at the SE Corner of the SW 1/4 of Section 23-34S-28E; thence run S 88°-00'-58" W along the Southerly Section Line a distance of 188.97 feet; thence N 01°-06'-50" W a distance of 25 feet; thence N 19°-25'-45" W a distance of 58.48 feet for Point of Beginning

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(SW'ly Cor. of Project); thence continue N 19°-25'-45" W a distance of 100 feet (NW'ly Cor. of Project); thence N 70°-34'-15" E a distance of 219.59 feet to the Westerly right of way line of US HWY 27 (NE'ly Cor. of Project); thence Southerly along the arc of the Westerly right of way line of US HWY 27 a distance of 100.21 feet (Radius 11,534.16 feet, Arc = 100.21 feet, Delta 00°-29'-53" Easterly) (SE'ly Cor. of Project); thence S 70°-34'-15" W a distance of 225.89 feet to Point of Beginning.