

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a staff-) DOCKET NO. 940983-SU
assisted rate case in Lee County) ORDER NO. PSC-94-1462-FOF-SU
by L.C.M. SEWER AUTHORITY, INC.) ISSUED: November 29, 1994
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DENYING STAFF ASSISTED RATE CASE APPLICATION, REQUESTS FOR
PAYMENT PLANS FOR APPLICATION FILING FEE AND REGULATORY
ASSESSMENT FEES AND REQUEST FOR WAIVER OF PENALTY AND INTEREST,
AND CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

L.C.M. Sewer Authority, Inc., (LCM or utility) is a Class C wastewater utility serving approximately 175 residential and forty-six multi-residential customers in the Leitner Creek Manor, Forest Creek, and Spanish Gardens subdivisions near Bonita Springs in Lee County. The utility began service in 1971 as Manna Christian Missions, Inc. On January 11, 1983, C.C.T., Inc., purchased the utility and was granted Certificate No. 352-S by Order No. 13119, issued March 22, 1984. A request for a name change was made and approved by Commission Order No. 22823, issued April 13, 1990, which changed the name of the utility to L.C.M. Sewer Authority, Inc.

On February 10, 1992, this Commission received a Notice of Abandonment pursuant to Section 367.165, Florida Statutes, giving a sixty-day notice of intention to abandon LCM in Lee County. On April 30, 1992, the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida, issued a Final Order Appointing Receiver, appointing Staco, Inc. (Staco) as receiver for the LCM system. The Commission acknowledged the appointment of Staco as receiver for LCM through Order No. PSC-92-0751-FOF-SU, issued August 5, 1992.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

On September 11, 1992, Staco noticed the Commission of its intent to withdraw as receiver, pursuant to Section 367.165, Florida Statutes. On the same date, Staco filed a Notice of Withdrawal as Receiver with the Twentieth Circuit Court. On November 20, 1992, the circuit court issued an Order Granting Former Receiver's Motion to Withdraw as Receiver, and Appointing New Receiver, appointing Water Spectrum, Inc. (WSI) to act as the new receiver for LCM. The Commission acknowledged the new receivership in accordance with Section 367.165, Florida Statutes, through Commission Order No. PSC-93-0374-FOF-SU, issued March 9, 1993.

On September 22, 1994, Judge Lynn Gerald, Jr., of the Twentieth Circuit Court, ordered liquidation of the WSI receivership of LCM within ninety days of the date of the order, and transfer of the LCM system to BSU (Case No. 92-2192CA-LGJ).

BSU has been in existence since 1970. Since 1971, BSU has been exempt from Commission jurisdiction for the provision of water service to over 13,000 customers in Southwest Lee County. In 1990, BSU began developing a regional wastewater treatment and disposal system. BSU is coordinating its effort with Lee County to provide regional service throughout the County. It is our understanding that BSU will eventually expand to allow approximately sixty small wastewater plants to be taken off line. To fund the wastewater system, BSU has secured \$22.8 million in Industrial Development Revenue Bonds.

On September 15, 1994, one week prior to the issuance of the circuit court order liquidating the WSI receivership of LCM and transferring the LCM system to BSU, WSI filed an application for a staff-assisted rate case on behalf of LCM (Docket No. 940983-SU). Along with the rate case application, WSI also filed a petition requesting payment plans for the required filing fee and for past due regulatory assessment fees, and requesting waiver of penalty and interest for non-payment of the regulatory assessment fees, citing severe financial hardship as grounds therefor. On October 12, 1994, our Staff received a letter from WSI requesting waiver of the rate case acceptance or denial letter due date and official filing date, to allow sufficient time for us to address WSI's petition. This order addresses WSI's application for a staff-assisted rate case and its petition in light of the circuit court order liquidating the WSI receivership and transferring the LCM system to BSU.

RATE CASE APPLICATION AND FILING FEE

BSU received an interconnect permit on October 14, 1994, from the Department of Environmental Protection. Because BSU will merge the LCM utility into its operations, the instant rate case is no longer necessary.

Although WSI has notified our Staff that it intends to file a court claim against BSU for fees incurred, we find no reason to believe that that claim, if filed, will affect the transfer of the utility to BSU. Moreover, in the event that WSI seeks, and obtains, a reversal of the circuit court order, WSI may reapply for rate relief at that time. Therefore, we find it appropriate to deny the staff-assisted rate case application filed by WSI on behalf of LCM, and to close this docket. WSI's request for a payment plan to pay the staff-assisted rate case application filing fee over a period of time is hereby denied, as moot.

REGULATORY ASSESSMENT FEES

WSI has also requested this Commission's approval to pay outstanding regulatory assessment fees for LCM within a twelve month period. As stated earlier, on November 20, 1992, the circuit court appointed WSI as receiver to take possession of and to operate the LCM facility. Section 6 of that order requires that LCM "shall remain liable under all applicable laws for any claims, violations, demands, penalties, suits, proceedings, actions or fees occurring prior to the appointment and acceptance by any [r]eceiver." (emphasis added). In Section 5 of the order, the circuit court grants immunity from liability to WSI, as receiver,

for any or all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees, that have arisen or may arise out of the past design, construction, operation, and maintenance of the [LCM facility]. This immunity shall include . . . violation of any governmental law, rule, regulation or requirement that may arise from the design, construction, operation, or maintenance of the [LCM facility] prior to the date of appointment of the [r]eceiver.

(emphasis added). The circuit court did not grant WSI immunity from liability for those fees incurred during the time it acted as receiver for LCM. The outstanding regulatory assessment fees were incurred from 1993, during the time that WSI acted as receiver of the LCM facility. Therefore, pursuant to Section 367.145, Florida

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Statutes, and Rule 25-30.120, Florida Administrative Code, WSI is required to pay those regulatory assessment fees.

WSI has requested that all penalties and interest for non-payment of regulatory assessment fees be waived for LCM. Pursuant to Sections 350.113(4) and (5), and Section 367.161, Florida Statutes, and Rule 25-30.120, Florida Administrative Code, we are required to collect interest, penalties and collection costs from a regulated company which is delinquent. Neither the Florida Statutes nor our rules provide us with the discretion to waive fees, penalties, or interest. Therefore, WSI shall immediately pay the penalties and interest associated with all past due regulatory assessment fees on behalf of LCM.

The amount of regulatory assessment fees due immediately, including penalty and interest, through November 30, 1994, is as follows: regulatory assessment fees - \$2,251.40; penalties and interest - \$742.96; total due - \$2,994.36.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that L.C.M. Sewer Authority, Inc.'s, application for a staff-assisted rate case is hereby denied. It is further

ORDERED that Water Spectrum, Inc.'s, request for a payment plan for the application filing fee is hereby denied as moot. It is further

ORDERED that Water Spectrum, Inc.'s, request for a twelve month payment plan for the payment of outstanding regulatory assessment fees is hereby denied. It is further

ORDERED that Water Spectrum, Inc., shall immediately pay all outstanding regulatory assessment fees on behalf of L.C.M. Sewer Authority, Inc. It is further

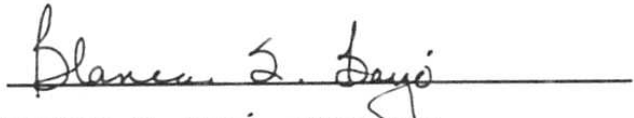
ORDERED that Water Spectrum, Inc.'s, request for waiver of those penalties and interest associated with the outstanding regulatory assessment fees is hereby denied. It is further

ORDERED that Water Spectrum, Inc., shall immediately pay all penalties and interest associated with the outstanding regulatory assessment fees, on behalf of L.C.M. Sewer Authority, Inc. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 29th
day of November, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RGC

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 and 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.