

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a staff-) DOCKET NO. 940973-WU
assisted rate case in Alachua) ORDER NO. PSC-95-0422-FOF-WU
County by LANDIS ENTERPRISES,) ISSUED: March 28, 1995
INC.)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER PLACING STAFF ASSISTED RATE CASE IN ABEYANCE FOR 60 DAYS,
AND REQUIRING SECURITY FOR EMERGENCY RATES

BY THE COMMISSION:

BACKGROUND

Lake Alto Water System (Lake Alto or Utility) is a Class C utility located in Alachua County. Alachua County became jurisdictional June 30, 1992. At that time, the owner of the Utility abandoned the system and Landis Enterprises, Inc. (LEI), became the court appointed receiver. The Utility provides residential water service to approximately 69 customers.

On March 8, 1993, LEI purchased Lake Alto. On March 26, 1993, the Utility applied for a certificate to provide water service in Alachua County. Order No. PSC-93-1550-FOF-WU, issued October 21, 1993, granted Certificate No. 556-W to LEI. The rates that were in effect at the time of the transfer were grandfathered in and miscellaneous service charges and service availability charges were also approved.

On September 14, 1994, Water Spectrum, Inc. (WSI), a management company affiliated with LEI through common ownership, applied for a staff assisted rate case for Lake Alto. In addition, WSI also requested a payment plan for the staff assisted rate case filing fee and the delinquent 1993 regulatory assessment fee, as well as a waiver of applicable penalties and interest. By Order No. PSC-94-1464-FOF-WU, issued November 29, 1994, the Commission approved payment plans for the Utility, allowing installment payments for the staff assisted rate case filing fee and delinquent

DOCUMENT NUMBER-DATE
03249 MAR 28 85
FPSC-RECORDS/REPORTING

regulatory assessment fee, together with penalties and interest, to be made over eight and four month periods, respectively. Payments were required to be made by the first working day of each month. If payments were not made by the specified date, the docket was to be closed. The plans were approved subject to final approval by the State of Florida Comptroller's Office. That approval was granted November 30, 1994.

The Utility made three of the filing fee installment payments; the last two were paid late. The Utility made only the first payment of the regulatory assessment fee. Therefore, the Utility is in violation of Order No. PSC-94-1464-FOF-WU. This will be discussed in greater detail below.

On October 5, 1994, the Commission received a request for interim rates from the Utility. The Utility represented that the existing rates were inadequate to cover day-to-day operation and maintenance expenses. By Proposed Agency Action (PAA) Order No. PSC-95-0098-FOF-WU, issued January 19, 1995, the Commission granted the Utility emergency rate relief based solely on the shortfall of operation and maintenance expenses over revenues, grossed-up for regulatory assessment fees.

On December 23, 1994, LEI filed with the Commission its notice of abandonment of Lake Alto on or before February 28, 1995, which was docketed in Docket No. 941329-WU. On February 14, 1995, the Circuit Court for Alachua County, Eighth Judicial Circuit, in Case No. 95-207-CA, appointed Berdell Knowles to act as receiver for Lake Alto.

On February 9, 1995, the Office of Public Counsel (OPC) filed a timely protest of PAA Order No. PSC-95-0098-FOF-WU. OPC protested on the grounds that the emergency rate increase was approved by the Commission without notice to customers or public hearing, and that the increase is not subject to refund if a rate increase is not justified in the pending staff assisted rate case. By letter dated February 16, 1995, Staff advised LEI that, even though the emergency rates had become effective on February 1, 1995, because the Commission timely received a protest of PAA Order No. PSC-95-0098-FOF-WU, the Utility could not collect the emergency rates until the protest was addressed at a hearing or at an Agenda Conference.

This Order addresses the status of Docket No. 940973-WU as a consequence of the Utility's failure to comply with the provisions of Order No. PSC-94-1464-FOF-WU.

STAFF-ASSISTED RATE CASE APPLICATION FILING FEE

By Order No. PSC-94-1464-FOF-WU, we approved an installment payment plan for Lake Alto's staff assisted rate case application filing fee. The approved plan required the Utility to make eight monthly installment payments of \$25 to discharge the total fee obligation of \$200. As noted in the case background, WSI remitted the first three of these payments, although the second and third remittances were late.

In that Order, we required that this docket be closed if any one of the installment payments of the staff assisted rate case application filing fee was not timely made. However, under the new circumstances of LEI's abandonment, closing the docket and, thereby, preempting any rate relief, would not well serve the interests of either the customers or the Utility. We have, on numerous occasions, recognized Lake Alto's financial plight and the need for this staff assisted rate case. Therefore, we do not find it appropriate to order that this docket be closed. Rather, if the Utility does not remit the installment payment due March 1, 1995, by March 8, 1995, we order that this docket be placed in abeyance for 60 days to allow the new receiver a reasonable opportunity to demonstrate to this Commission that the staff assisted rate case should be reactivated. The demonstration shall include, at a minimum, payment of the outstanding staff assisted rate case application filing fee in accordance with an installment plan like the plan approved in Order No. PSC-94-1464-FOF-WU. The new receiver will assume the operational responsibility for Lake Alto in its currently weakened state, and could be expected to immediately make such a demonstration to the Commission. This would enable the new receiver to avoid the need to file a new application for a staff assisted rate case, which would be wasteful of the resources of everyone involved. Moreover, the new receiver would be compelled to act with respect to the inadequacies of the Utility's rates and charges within a reasonable period of time, or incur the closing of this docket. Complete payment of the application filing fee, consistent with Order No. PSC-94-1464-FOF-WU, is necessary for processing the Lake Alto staff assisted rate case and implementation of the final tariffs.

DELINQUENT REGULATORY ASSESSMENT FEE

In Order No. PSC-94-1464-FOF-WU, we also approved an installment payment plan for Lake Alto's delinquent regulatory assessment fee for 1993, together with penalties and interest. The approved plan required the Utility to make four successive monthly installment payments of \$160.83, beginning December 8, 1994, to discharge the total fee obligation of \$643.32 by March 31, 1995.

As noted in the case background, WSI remitted only the first of these payments.

Order No. PSC-94-1464-FOF-WU required that this docket be closed if any of the installment regulatory assessment fee payments were not timely made. However, as with the staff assisted rate case application filing fee, under the new circumstances of LEI's abandonment, closing the docket for this reason would not serve the interests of the customers nor the Utility. Accordingly, we do not find it appropriate that Lake Alto Water System's failure to pay the delinquent 1993 regulatory assessment fee in accordance with the installment payment plan approved in Order No. PSC-94-1464-FOF-WU should result in the closing of this docket. Rather, we shall consider the responsibility for payment of the delinquent regulatory assessment fee and attendant penalties and interest at a later date.

SECURITY FOR EMERGENCY RATES

As stated in the case background, by Order No. PSC-95-0098-FOF-WU, the Commission granted the Utility's request for emergency rate relief. On February 9, 1995, OPC timely filed a protest of that Order. OPC protested on the grounds that the emergency rate increase was approved by the Commission without notice to customers or public hearing, and that the increase was not subject to refund if a rate increase is not justified in the pending staff assisted rate case. As a result, the Utility has not been able to implement the emergency rates.

Section 367.082, Florida Statutes, requires that the difference between interim rates and previously authorized rates be collected under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission. The emergency rates requested by the utility are analogous to interim rates in that they will only be effective until final rates are approved in the pending staff assisted rate case.

It is clear that the Utility is in need of increased emergency rates. By granting emergency rate relief in Order No. PSC-95-0098-FOF-WU, we acknowledged that the Utility is operating at such a deficit that it cannot meet daily operation and maintenance expenses through its current revenues. The need for emergency rate relief still exists and is in fact now even greater. Due to Lake Alto's financial plight, we find it appropriate to allow the Utility to implement the emergency rates, subject to refund, after providing appropriate security and notice, pending the resolution of the protest.

The emergency rates shall be effective for service rendered as of the stamped approval date on the revised tariff sheets, in accordance with Rule 25-30.475, Florida Administrative Code, provided customers have received notice. The Utility shall provide proof that the customers have received notice within ten days of the date of the notice. Tariff sheets shall be approved upon our staff's verification that the tariff sheets are consistent with the Commission's decision, that the proposed customer notice is adequate, and that the required security has been provided. In no event shall the rates be effective for services rendered prior to the stamped approval date.

The Utility shall provide security in the form of a bond or letter of credit in the amount of \$3,638. Alternatively, the Utility could establish an escrow agreement with an independent financial institution.

If the Utility chooses a bond as security, the bond shall contain wording to the effect that it will be terminated only under the following conditions:

- 1) The Commission approves the final rate increase; or
- 2) If the Commission denies the increase, the Utility shall refund the amount collected that is attributable to the increase.

If the Utility chooses a letter of credit as a security, the letter shall contain the following conditions:

- 1) The letter of credit is irrevocable for the period it is in effect.
- 2) The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

If security is provided through an escrow agreement, the following conditions shall be part of the agreement:

- 1) No refunds in the escrow account may be withdrawn by the Utility without the express approval of the Commission.
- 2) The escrow account shall be an interest bearing account.
- 3) If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.

- 4) If a refund to the customers is not required, the interest earned by the escrow account shall revert to the Utility.
- 5) All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
- 6) The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
- 7) This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
- 8) The Director of Records and Reporting must be a signatory to the escrow agreement.

In no instance shall the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and shall be borne by, the Utility. Irrespective of the form of security chosen by the Utility, an account of all monies received as result of the rate increase shall be maintained by the Utility. This account must specify by whom and on whose behalf such monies were paid. If a refund is ultimately required, it shall be paid with interest calculated pursuant to Rule 25-30.360(4), Florida Administrative Code.

The Utility shall maintain a record of the amount of the security provided, and the amount of revenues that are subject to refund. After the increased rates are in effect, the Utility shall file reports with the Division of Water and Wastewater no later than 20 days after each monthly billing. These reports shall indicate the amount of revenue collected under the increased rates.

SHOW CAUSE PROCEEDING

As stated in the case background, Lake Alto is in apparent violation of Order No. PSC-94-1464-FOF-WU for late payments under the payment plans approved in that order for the Utility's staff assisted rate case application filing fee and its delinquent regulatory assessment fee. Lake Alto made the first three installment payments of the staff assisted rate case application filing fees only after they had become due. It has only made the first installment payment of the delinquent regulatory assessment

fee, and that, only after it had become due. Section 367.161, Florida Statutes, requires a Utility that knowingly refuses to comply with or willfully violates any provision of a commission order to incur a penalty of not more than \$5,000 for each offense.

The Utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. The Utility's failure to adhere to the payment installment plans, which it requested, would meet the standard for a "willful violation." In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6 .

The failure of the Utility to adhere to the approved payment installment plans can be ascribed to its financial distress. By approving the request for emergency rates in Order No. PSC-95-0098-FOF-WU, we acknowledged that the Utility is operating at such a deficit that it cannot meet daily operation and maintenance expenses through its current rates. LEI has noticed its intention to abandon Lake Alto, and utilities in Putnam and Volusia Counties as well. A show cause proceeding against the Utility is unlikely to result in any constructive outcome. Moreover, such a proceeding would place an additional obstacle in the new receiver's path. Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not believe that this Utility's violation of our Order rises in these circumstances to the level of warranting that a show cause order be issued.

Based on the foregoing, it is , therefore

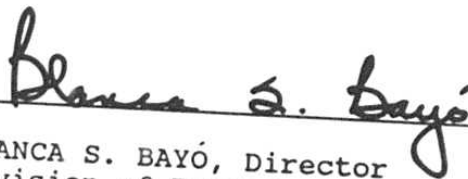
ORDERED by the Florida Public Service Commissions that if the installment payment due March 1, 1995, is not made by March 8, 1995, this docket shall be placed in abeyance for 60 days to give Lake Alto Water System an opportunity to inform this Commission that the staff assisted rate case should be reactivated and to complete payment of the staff assisted rate case application fee. It is further

ORDERED that Lake Alto Water System shall implement the emergency rates approved in Order No. PSC-95-0098-FOF-WU, subject to refund, after providing appropriate security and notice, as outlined in the body of this Order. It is further

ORDER NO. PSC-95-0422-FOF-WU
DOCKET NO. 940973-WU
PAGE 8

ORDERED that this docket remain open.

By ORDER of the Florida Public Service Commission, this 28th
day of March, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

SKE