

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff-) DOCKET NO. 940974-WU
assisted rate case in Putnam) ORDER NO. PSC-95-0429-FOF-WU
County by Landis Enterprises,) ISSUED: March 29, 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

BY THE COMMISSION:

BACKGROUND

Port Buena Vista Water System (PBV or Utility)), established by P.B.V. Corporation in 1969, is a Class C water utility serving 59 residential customers and 1 general service customer near Palatka in Putnam County (County). Upon P.B.V. Corporation's abandonment, March 15, 1993, Landis Enterprises, Inc. (LEI), was appointed receiver for the Utility. On June 3, 1993, LEI purchased the Utility. The Commission approved PBV's application for a water certificate by Order No. PSC-94-0804-FOF-WU, issued June 29, 1994.

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 PBV. WSI requested a payment plan for both the staff-assisted rate case filing fee and the Utility's delinquent 1992 and 1993 regulatory assessment fees, as well as waiver of penalties and interest. By Order No. PSC-94-1464-FOF-WU, issued November 29, 1994, we approved payment plans for both the application filing fee and the delinquent regulatory assessment fees, but we declined to waive penalties and interest. The payment plan for the staff-assisted rate case filing fee allowed installment payments over an eight month period, with the first payment due by December 8, 1994, and subsequent payments by the first working day of the month. If any payment were not timely made, the docket was to be closed. The payment plan for the delinquent regulatory assessment fees similarly allowed payments

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over a four month period. The installment payment plans were approved subject to the final approval of the State of Florida Comptroller's Office. That approval was granted on November 30, 1994.

The Utility made three of the installment payments of the filing fee, the last two, late. The first payment was made on December 8, 1994; the second, due on January 3, 1995, was made on January 12, 1995; and the third, due on February 1, 1995, was made on February 14, 1995. The Utility made only the first installment payment of the regulatory assessment fees, that payment, timely. Therefore, the Utility is in violation of Order No. PSC-94-1464-FOF-WU. This will be discussed in greater detail below.

On October 4, 1994, LEI filed with the Commission a petition for interim rates for PBV during the pendency of the Utility's staff-assisted rate case. The Utility represented that the existing rates, grandfathered in with the issuance of its certificate, June 29, 1994, were inadequate to cover day-to-day operation, maintenance, and management expenses. By Order No. PSC-95-0043-FOF-WU, issued January 10, 1995, we denied the Utility emergency rate relief, finding that it could cover those expenses with current revenues.

On December 23, 1994, LEI filed with this Commission and the Circuit Court for Putnam County, Seventh Judicial Circuit, its notice of abandonment of PBV, on or before February 28, 1995. The matter was docketed in Docket No. 941330-WU. On February 13, 1995, Putnam County petitioned the circuit court for appointment of a receiver for PBV. The court docketed the County's petition as Case No. 95-5054-CA-52. The 60-day statutory noticing period required by Section 367.165, Florida Statutes, expired on February 21, 1995. The County has been operating the water system under an informal arrangement since the expiration of the noticing period.

This Order addresses the status of Docket No. 940974-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 PBV'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 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 were 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 PBV'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 either a new owner or a receiver, as the case may be, 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. A new owner or, more likely, a new receiver, will assume the operational responsibility for PBV in its currently weakened state, and could be expected to immediately make such a demonstration to the Commission. This would enable a new owner or 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, a new owner or 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. (The payment due March 1, 1995 was not made by March 8, 1995.)

Putnam County presently has a petition before the circuit court for appointment of a receiver for PBV. We recognize that there may be a period of time between the court's appointment of a receiver, or, less likely, a transfer of ownership from LEI to another, and LEI's effective abandonment in which payments under the approved plan will not be made. Nonetheless, complete payment of the application filing fee, consistent with Order No. PSC-94-1464-FOF-WU, is necessary for processing the PBV staff-assisted rate case and implementation of the final tariffs.

DELINQUENT REGULATORY ASSESSMENT FEES

In Order No. PSC-94-1464-FOF-WU, we also approved an installment payment plan for PBV's delinquent regulatory assessment fees for 1992 and 1993, together with penalties and interest. The approved plan required the Utility to make four successive monthly installment payments of \$447.22, beginning December 8, 1994, to discharge the total fee obligation of \$1788.88 by March 31, 1995.

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

In that Order, we required as well that this docket be closed if any one of the installment payments of the delinquent regulatory assessment fees were not timely made. However, as with the staff-assisted rate case application filing fee, under the new circumstances of LEI's abandonment, neither would closing the docket for this reason well serve the interests of the customers or the Utility. Accordingly, we do not find it appropriate that Port Buena Vista Water System's failure to pay the delinquent 1992 and 1993 regulatory assessment fees 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 await the disposition of the County's petition for the appointment of a receiver for the Utility, before further considering the responsibility for payment of the delinquent regulatory assessment fees and attendant penalties and interest.

SHOW CAUSE PROCEEDING

PBV 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 staff-assisted rate case application filing fee and the delinquent regulatory assessment fees. 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.

We found it appropriate to deny PBV emergency rate relief in Order No. PSC-95-0043-FOF-WU. Nonetheless, the failure of the Utility to adhere to the approved installment payment plans can be ascribed to LEI's overall financial distress. Simultaneously, LEI has abandoned utilities in Alachua and Volusia Counties as well. We do not believe that a show cause proceeding against the Utility

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is likely to result in any constructive outcome. Moreover, such a proceeding would place an additional obstacle in the new receiver's or new owner's path. Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, we do not believe that the Utility's violation of the Commission's order rises in these circumstances to the level of warranting that a show cause order be issued.

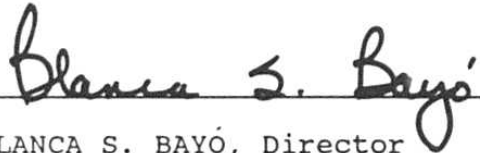
Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission 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 Port Buena Vista 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 in accordance with the approved payment plan. It is further

ORDERED that each of the findings made herein are hereby approved in every respect. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 29th day of March, 1995.

A handwritten signature in cursive script that reads "Blanca S. Bayó". The signature is written in black ink and is positioned above a horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

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/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.