

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Notice of Abandonment of) DOCKET NO. 941331-WS
Facility in Volusia County by) ORDER NO. PSC-95-0842-FOF-WS
Landis Enterprises, Inc.) ISSUED: July 14, 1995
_____)

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 ACKNOWLEDGING ABANDONMENT, APPOINTMENT OF RECEIVER, AND
EXEMPT STATUS OF RECEIVER
AND
NOTICE OF PROPOSED AGENCY ACTION ORDER ESTABLISHING
RESPONSIBILITY FOR PAYMENT OF REGULATORY ASSESSMENT FEES AND
FILING ANNUAL REPORT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein requiring Water Spectrum, Inc., to pay regulatory assessment fees, but not requiring the filing of the 1994 annual reports, 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.

BACKGROUND

On December 23, 1994, Water Spectrum, Inc., (WSI), as the receiver, filed a notice of abandonment of Pine Island Utility Corporation (Pine Island Utility or utility) with this Commission, pursuant to Section 367.165, Florida Statutes. Pine Island Utility is a class C utility presently serving 86 water and 71 wastewater customers. According to its 1993 annual reports, in 1993, the utility earned revenues for water service of \$7,754 and for wastewater service of \$8,456, and suffered net operating losses for water of \$24,979 and for wastewater of \$18,034. On July 15, 1993, Judge C. McFerrin Smith, III, Circuit Court, Seventh Judicial Circuit, Volusia County, appointed WSI receiver

for Pine Island Utility. WSI is an affiliate of Landis Enterprises, Inc., (LEI), providing management services. This followed the filing on December 29, 1992, of a notice of abandonment of the utility by the utility's president, Robert McTeer. The utility was granted Certificates Nos. 326-W and 274-S in Order No. 9054, issued September 14, 1979.

The utility filed a staff-assisted rate case on March 4, 1991, which was docketed as Docket No. 910276-WS. In Order No. PSC-92-0126-AS-WS, issued March 31, 1992, we authorized the utility to collect increased rates for water and wastewater. In the same docket, in Order No. PSC-94-0449-FOF-WS, issued April 14, 1994, we authorized rates for non-metered water and wastewater customers, but we ordered the docket be kept open in order to monitor the utility's efforts to correct a number of water and wastewater system deficiencies. Later in that docket, in Order No. PSC-94-1053-FOF-WS, issued August 29, 1994, we denied the utility's petition for further rate relief and again ordered the docket be kept open in order to continue monitoring the utility's efforts to correct still-unaddressed system deficiencies.

On September 15, 1994, the utility filed an application for another staff-assisted rate case, which was docketed in Docket No. 940982-WS. In Order No. 94-1463-FOF-WS, issued November 29, 1994, in that docket, we permitted the utility to pay the staff-assisted rate case application filing fees and the delinquent 1993 regulatory assessment fees according to installment plans. We placed the docket in 30-day abeyance to allow the utility a further opportunity to address system deficiencies. Following WSI's notice of its intention to abandon the receivership for the utility, in Order No. PSC-95-0302-FOF-WS, issued March 3, 1995, in the latter docket, we authorized emergency rate relief to be implemented only upon the appointment of a successor receiver for the utility. We ordered Docket No. 910276-WS closed and Docket No. 940982-WS to remain in abeyance until the appointment of the successor receiver and that receiver's representation to the Commission that it wished to reactivate the staff-assisted rate case.

ACKNOWLEDGMENT OF ABANDONMENT AND APPOINTMENT OF RECEIVER

On February 28, 1995, Judge John W. Watson, III, Circuit Court, Seventh Judicial Circuit, Volusia County, appointed Volusia County substitute receiver for Pine Island Utility.

The order appointing the receiver provided that:

- 1) The previous owner surrender all property, assets, documents, and facilities pertaining to Pine Island Utility to the receiver;
- 2) The receiver operate the utility in such a manner so as to provide efficient, effective and environmentally sound continuous service to the customers of the utility as can be provided from the revenues of the system;
- 3) The receiver pay all necessary and reasonable operating expenses from the revenues collected in a manner designed to continue the efficient, effective and environmentally sound operation of the utility; and
- 4) The receiver shall make extensions, expansions, repairs, replacements, and improvements to Pine Island Utility as appropriate and necessary.

Pursuant to Rule 25-30.090(3), Florida Administrative Code, we furnished Volusia County with copies of Pine Island Utility's tariffs and most recent annual reports. As previously noted, the utility operated at substantial deficit in 1993. Both the water and wastewater systems have been and are currently out of compliance with applicable environmental regulations. The water system falls under the enforcement authority of the Volusia County Public Health Unit (VCPHU), while the wastewater systems falls under the enforcement authority of the Department of Environmental Protection (DEP).

Accordingly, we find it appropriate to acknowledge Water Spectrum, Inc.'s abandonment of Pine Island Utility Corporation and the appointment on February 28, 1995, of Volusia County as substitute receiver for the utility.

EXEMPTION

On March 17, 1995, Volusia County requested an exemption from Commission regulation pursuant to Section 367.022(2), Florida Statutes. Rule 25-30.090(6), Florida Administrative Code, provides that a governmental authority appointed as receiver by the circuit court shall, upon request, be found exempt pursuant to Section 367.022(2), Florida Statutes. Accordingly, we acknowledge the exempt status of Volusia County as the receiver for Pine Island Utility Corporation.

RESPONSIBILITY FOR PAYING 1994 REGULATORY ASSESSMENT FEES AND
FILING 1994 ANNUAL REPORTS

Pursuant to Section 367.121(1)(c), Florida Statutes, and Rule 25-30.110, Florida Administrative Code, each regulated utility shall file an annual report with the Commission by March 31 for the preceding calendar year. In addition, a regulated utility is required to remit regulatory assessment fees each year based upon its gross operating revenues, pursuant to Sections 350.113 and 367.145, Florida Statutes, and Rule 25-30.120(1), Florida Administrative Code. The abandonment of the utility does not eliminate the utility's responsibility for payment of the fees or filing the annual report.

As previously mentioned, this utility was first abandoned by its then-owner, Robert McTeer, in December, 1992, and then in December, 1994, by its first receiver, WSI, acting as the managing agent for LEI. Pine Island Utility Corporation has dissolved. We recognize that the substitute receiver, Volusia County, could, upon advancing funds from its resources sufficient to discharge the utility's accrued liability for 1994 regulatory assessment fees, subsequently recover those funds through increased rates. However, we believe it to be inappropriate to in any way encourage the substitute receiver to take that step, because the unjust effect would be to tax the utility's customers a second time for those fees. Moreover, our essential interest is that the substitute receiver provide uninterrupted efficient and effective water service to the utility's customers, while addressing those deficiencies that threaten the utility's viability.

In this case, the utility's obligation to pay the regulatory assessment fees for 1994 arose during the term of WSI's service as the utility's first receiver. Additionally, WSI collected fully those revenues upon which the 1994 fees are assessed before the abandonment became effective. Thus, we find that WSI, acting in LEI's interest, is responsible to pay the utility's regulatory assessment fees for 1994 and for 1995 up to February 28, 1995, the date of the substitute receiver's appointment. Furthermore, we find it appropriate that WSI be given 60 days from the effective date of this order in which to pay the past-due 1994 regulatory assessment fees for Pine Island Utility, with penalties and interest.

Section 367.145, Florida Statutes, provides that a governmental authority to whom control of a regulated utility passes is not liable for any fees owned the Commission by the utility as of the passing date. The circuit court's order appointing Volusia County substitute receiver provides that Pine Island shall remain liable under all applicable laws for any claims, debts, violations, demands, penalties, suits, proceedings, actions or fees prior to the appointment and acceptance by the

receiver. The order further requires the receiver to operate the utility in a manner so as to provide efficient, effective and environmentally sound continuous service to the utility's customers and to keep separate the utility's revenues from the revenues of the receiver. We have herein acknowledged Volusia County's exempt status as a governmental authority acting as receiver pursuant to Section 367.022(2), Florida Statutes, and Rule 25-30.090(6), Florida Administrative Code, and, therefore, no regulatory assessment fees will be owing after the date of the County's appointment.

As with the regulatory assessment fees, the obligation to file Pine Island Utility's annual reports for 1994 arose prior to abandonment by WSI. However, since we have, again, acknowledged Volusia County's exempt status, we will not regulate these systems as long as the County operates them as their receiver. We find that we have no need for the utility's annual reports for 1994 and, therefore, we will not require WSI to file them.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that the abandonment of Pine Island Utility Corporation by Water Spectrum, Inc., and the appointment on February 28, 1995, of Volusia County as the receiver for Pine Island Utility Corporation are herein acknowledged. It is further

ORDERED that the exempt status of Volusia County, pursuant to Section 367.022(2), Florida Statutes, is herein acknowledged. it is further

ORDERED that Water Spectrum, Inc., shall be responsible for payment of regulatory assessment fees due for calendar year 1994 and up to February 28, 1995. It is further

ORDERED that Water Spectrum, Inc., shall remit the 1994 regulatory assessment fees, with penalties and interest, within 60 days of the effective date of this order. It is further

ORDERED that Water Spectrum, Inc., shall not be required to file the utility's 1994 annual reports. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth

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in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 14th day of July, 1995.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed copy of the order may be obtained by calling 1-904-413-6770.

(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.

As identified in the body of this order, our action requiring Water Spectrum, Inc., to pay regulatory assessment fees, but not requiring the filing of the 1994 annual reports 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 4, 1995. 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.