

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Landmark Enterprises, Inc., in Highlands County for violation of Rule 25-30.110(3), F.A.C., Annual Report, and Rule 25-30.120, F.A.C., Regulatory Assessment Fees.

DOCKET NO. 971622-SU
ORDER NO. PSC-98-0269-FOF-SU
ISSUED: February 10, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE AND
REQUIRING IMMEDIATE PAYMENT OF REGULATORY ASSESSMENT FEES

BY THE COMMISSION:

BACKGROUND

Landmark Enterprises, Inc. (Landmark or utility) is a Class C Utility located in Highlands County which provides wastewater service to approximately 243 residential customers and 9 general service customers.

The utility has failed to file annual reports from 1993 to 1996 and failed to remit regulatory assessment fees for 1994 and 1995. This Order addresses the utility's failure to file its annual reports from 1993 to 1996 and its failure to remit regulatory assessment fees for 1994 and 1995.

1993 TO 1996 ANNUAL REPORTS

Rule 25-30.110, Florida Administrative Code, requires utilities subject to the Commission's jurisdiction as of

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December 31 of each year to file an annual report on or before March 31 of the following year. Requests for extension of time must be in writing and must be filed before March 31. One extension of 30 days is automatically granted. A further extension may be granted upon showing of good cause. Incomplete or incorrect reports are considered delinquent, with a 30 day grace period in which to supply the missing information.

Pursuant to Rule 25-30.110(6)(c), Florida Administrative Code, any utility that fails to file a timely, complete annual report is subject to penalties, absent demonstration of good cause for noncompliance. The penalty set out in Rule 25-30.110(7), Florida Administrative Code, for Class C utilities is \$3.00 per day. We have calculated the penalty based on the number of days elapsed since March 31 and the date of the agenda. The date of the agenda is included in computing the number of days elapsed. We note that the penalty will still accrue until the utility files its annual reports.

By letters dated June 6, 1994, April 12, 1996, June 26, 1996, July 26, 1996, June 3, 1997, July 28, 1997, and November 19, 1997, our staff notified the utility that since it had not filed its annual reports, it was in apparent violation of Rule 25-30.110, Florida Administrative Code. The utility was directed to file the reports by November 19, 1997. The utility was given a final opportunity to file the annual reports by December 1, 1997.

SUMMARY AND FINDINGS OF ANNUAL REPORT VIOLATIONS

Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833). Thus, any intentional act, such as the utility's failure to timely file its annual report, 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 "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

In consideration of the foregoing, Landmark is ordered to show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$10,116 (\$4,173 for 1,391 days x \$3.00 per day for 1993; \$3,078 for 1026 days x \$3.00 for 1994; \$1,980 for 660 days x \$3.00 per day for 1995; and \$885 for 295 days x \$3.00 per day for 1996) for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its annual reports from 1993 to 1996. Landmark shall immediately file its annual reports from 1993 to 1996, and is hereby put on notice that further violations of Rule 25-30.110, Florida Administrative Code, will result in further action by the Commission.

1994 AND 1995 REGULATORY ASSESSMENT FEES

In establishing rates, the Commission includes in its determination of the revenue requirements the utility's obligation to pay regulatory assessment fees. However, this utility has failed to pay regulatory assessment fees since 1994.

Pursuant to Section 350.113(4), Florida Statutes, and Rule 25-30.120(5)(a), Florida Administrative Code, a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its regulatory assessment fees, in the following manner:

1. 5 percent of the fee if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.
2. The amount of interest to be charged is 1% for each 30 days or fraction thereof, not to exceed a total of 12% annum.

In addition, pursuant to Sections 367.145(1)(b) and 367.161, Florida Statutes, and Rule 25-30.120(5)(b), Florida Administrative Code, the Commission may impose an additional penalty upon a utility for failure to pay regulatory assessment fees in a timely manner.

Notices of delinquency for failure to remit its regulatory assessment fees were mailed to the utility on April 12, 1996, and May 23, 1997. While our staff has had several telephone conversations with Mr. Plank, no action was taken by the utility

in response to either of these notices. As of January 31, 1998, the utility owes the following: \$1,528.29 in regulatory assessment fees, as well as \$382.07 in penalties, and \$534.90 in interest for a total of \$2,445.26 for 1994; \$1,558.09 in regulatory assessment fees, as well as \$389.52 in penalties, and \$358.36 in interest for a total of \$2,305.97 for 1995.

We have calculated the penalty and interest based on the number of days elapsed since the respective regulatory assessments were due and the date of the agenda. The date of the agenda is included in computing the amount of time elapsed. We note that penalties and interest will continue to accrue until the utility pays the delinquent regulatory assessment fees.

Since 1994, this utility has collected the regulatory assessment fees and not paid them as required by statute. Regulatory assessment fees are intended to defray the costs incurred in our regulation of utilities. Apparently, the utility has no inclination to pay the fees voluntarily, nor does it appear that the utility is making a good faith effort toward payment. As discussed in this Order, utilities are charged with the knowledge of the Commission's rules and statutes. Thus, the intentional act of failing to remit regulatory assessment fees would meet the standard for a "willful violation." Accordingly, the utility is ordered to show cause, in writing, within 20 days, why it should not remit penalties and interest in the amounts of \$382.07 and \$534.90, respectively, for 1994, and penalties and interest in the amounts of \$389.52 and \$358.36, respectively, for 1995, for its failure to remit its regulatory assessment fees. Further, Landmark is ordered to immediately remit a total of \$3,086.38 in delinquent regulatory assessment fees for 1994 and 1995.

RESPONSE TO ORDER TO SHOW CAUSE AND CLOSING THE DOCKET

Landmark's response to this Order to Show Cause must contain specific allegations of fact and law. Should Landmark file a timely written response that raises material questions of fact and requests a hearing pursuant to Section 120.57(1), Florida Statutes, further proceedings shall be scheduled before a final determination on this matter is made. If the utility responds timely but does not request a hearing, our staff will prepare and present a recommendation to us regarding the disposition of this proceeding, and the Docket shall not be closed. If the utility responds to this Order by filing the annual reports, remitting the regulatory

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assessment fees, and all associated penalties and interest, the Docket shall be closed administratively.

A failure to file a timely written response to this Order shall constitute an admission of the facts herein alleged and a waiver of the right to a hearing. In the event Landmark fails to file a timely response to this Order, the penalties and interest are deemed assessed with no further action required by the Commission. In that event, if Landmark fails to respond to reasonable collection efforts by Commission staff, the collection of fees, penalties, and interest shall be referred to the Comptroller's office for further collection efforts. Reasonable collection efforts shall consist of two certified letters requesting payment from the utility. Referral of this matter to the Comptroller's office would be based on the conclusion that further collection efforts by our staff would not be cost effective. After referral to the Comptroller's office, this docket shall be closed.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that Landmark Enterprises, Inc., show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$10,116 for violation of Rule 25-30.110, Florida Administrative Code, by failing to file its annual reports from 1993 to 1996. It is further

ORDERED that Landmark Enterprises, Inc., immediately file annual reports from 1993 to 1996, and is hereby put on notice that further violations of Rule 25-30.110, Florida Administrative Code, will result in further action by the Commission. It is further

ORDERED that Landmark Enterprises, Inc., show cause, in writing, within 20 days, why it should not remit a penalty in the amount of \$385.52 and interest in the amount of \$358.36 for violations of Rule 25-30.120(5)(b), Florida Administrative Code. It is further

ORDERED by that Landmark Enterprises, Inc., immediately remit \$3,086.38 in delinquent regulatory assessment fees for 1994 and 1995. It is further

ORDERED that any response to this Order to show cause must contain specific allegations of fact and law. It is further

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ORDERED that any response to this Order to show cause be filed with the Director of the Division of Records and Reporting within 20 days of this Order. It is further

ORDERED that in the event that Landmark Enterprises, Inc., files a written response which raises material questions of fact and requests a hearing pursuant to Section 120.57, Florida Statutes, further proceedings may be scheduled before final determination is made. It is further

ORDERED that if Landmark Enterprises, Inc., fails to file a timely response to this Order to show cause, such failure shall constitute an admission of the facts alleged in the body of this Order and a waiver of any right to a hearing. It is further

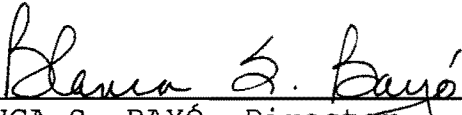
ORDERED that if reasonable collection efforts are unsuccessful, the collection of penalties and interest shall be forwarded to the Comptroller's office and the docket shall be closed. It is further

ORDERED that if Landmark Enterprises, Inc., responds to this Order to show cause by filing the annual reports, remitting the regulatory assessment fees, penalties, and interest, this docket shall be closed administratively. It is further

ORDERED that any payment of penalties shall be forwarded to the Comptroller's office for deposit in the State General Revenue Fund.

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By ORDER of the Florida Public Service Commission this 10th
day of February, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. 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 25-22.037(1), 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 March 3, 1998.

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Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any 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.