

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for a staff- ) DOCKET NO. 940973-WU  
assisted rate case in Alachua ) ORDER NO. PSC-95-0098-FOF-WU  
County by LANDIS ENTERPRISES, ) ISSUED: January 19, 1995  
INC. )  
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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

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING EMERGENCY RATE INCREASE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein 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

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

On March 8, 1993, LEI purchased the utility. 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 approved.

On September 14, 1994, the utility applied for a staff assisted rate case. The utility also requested a payment plan for the staff assisted rate case filing fees and delinquent regulatory

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assessment fees. On November 8, 1994, the Commission approved a payment plan for the utility allowing installments to be made over an eight month period.

On October 5, 1994, the Commission received a request for emergency rates from LEI on behalf of the utility. The utility represented that the existing rates were inadequate to cover operation and maintenance expenses.

#### EMERGENCY RATES

Ordinarily, the Commission does not consider emergency rates within the context of a staff assisted rate case, unless the utility is in receivership. We wish to encourage utilities to seek rate relief in a timely manner rather than allowing financial circumstances to worsen before the utilities seek relief through an application for a rate increase. However, the recent history of this utility warrants the granting of emergency rates. The emergency rates approved herein are based solely on the difference between operation and maintenance expenses and revenues, grossed-up for regulatory assessment fees.

Based on Lake Alto's 1993 Annual Report, the utility is operating at a loss. The utility's initial rates were grandfathered in by Order No. PSC-93-1550-FOF-WU, issued October 21, 1993. The Commission granted the utility a rate adjustment through the 1994 Price Index and the rates became effective November 12, 1994.

The utility provided 14 months of financial data for revenue and operating expenses for the period ended August 1994. We reviewed the most recent 12 months of data. We analyzed this data and made adjustments to reflect operation and maintenance expenses that are reasonable for a utility of this size. We also calculated annualized revenue based on the number of customers and consumption from the 1993 Annual Report, using rates that became effective November 12, 1994. Based on this analysis, including adjustments, the utility is operating at a loss.

The pending staff assisted rate case is scheduled to be addressed at the April 18, 1995 agenda conference with a protest period ending May 29, 1995. This means that the utility could not be granted compensatory rates from the staff assisted rate case before the end of May, 1995. We believe it is unfair to require a receiver or new owner in such circumstances to finance a utility's operating deficits during the time it takes to obtain rate relief. Conservatively, Lake Alto will have expended an unrecoverable \$2,600 in operating expenses in excess of revenues by the time

permanent rates could be granted. This could jeopardize the utility's financial viability and result in further deterioration of plant and equipment. An emergency rate increase is needed to provide funding for Lake Alto's day to day operations. Therefore, we hereby order that emergency rate relief be granted.

Our calculations for an emergency rate increase show that the utility's operation and maintenance expenses, grossed up for regulatory assessment fees, exceed annualized revenue by \$5,270 (see Schedule 1, which by reference is incorporated herein). The emergency rate increase approved herein represents a 51.20% increase in revenue. A schedule of the utility's existing rates and the emergency rates follows:

Monthly Rates

Water

	<u>Existing Rates</u>	<u>Emergency Rates</u>
Minimum charge	\$6.97 w/2,000 gals 2.47 per 1,000 gals	\$10.54 w/2,000 gals 3.73 per 1,000 gals

Based on the 1993 Annual Report, average consumption is approximately 2,000 gallons per month, not including the first 2,000 gallons consumption per customer. The average water bill for a customer under the existing rates is \$11.97. The average water bill for a customer under the emergency rates is \$18.00. The percentage increase is 51.13%.

This emergency rate increase is to provide funds to cover operation and maintenance expenses only, grossed up for regulatory assessment fees. A return on rate base and depreciation expense was not included in the calculation of the increase. Therefore, these emergency rates are not intended to be compensatory. Also, these emergency rates are being granted due to the unique circumstances present in this docket. As such, this Order should not be viewed as precedent setting for future dockets.

The approved 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 to this Commission that the customers have received notice within ten (10) days of the date of the notice. Tariff

sheets shall be approved upon our verification that the tariff sheets are consistent with our decision, and that the proposed customer notice is adequate. In no event shall the rates be effective for services rendered prior to the stamped approval date.

Since this petition for emergency rate relief was filed within the context of a staff assisted rate case, this docket is to remain open for processing of the staff assisted rate case.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Landis Enterprises, Inc.'s request for an emergency rate increase is hereby approved, as set forth in the body and Schedule 1 of this Order. It is further

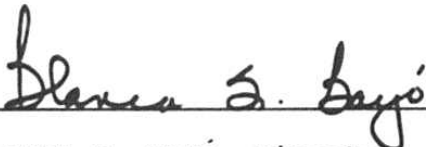
ORDERED that Landis Enterprises, Inc., shall file revised tariff sheets in accordance with the provisions of this Order. It is further

ORDERED that Landis Enterprises, Inc., shall file a proposed notice to its customers detailing the increased rates and the reasons therefor. The utility shall provide proof to this Commission that the customers have received notice within ten (10) days of the date of the notice. It is further

ORDERED that the emergency water rates approved herein shall be effective for service rendered as of the stamped approval date on the revised tariff sheets. The revised tariff sheets will be approved upon Staff's verification that they are consistent with the Commission's decision, and that the proposed customer notice is adequate. It is further

ORDERED that this docket shall remain open to process Landis Enterprises, Inc.'s application for a staff-assisted rate increase.

By ORDER of the Florida Public Service Commission, this 19th  
day of January, 1995.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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Commissioner Clark dissented without opinion.

Chairman Deason dissents as follows:

In granting a rate increase for this utility without holding out an effective opportunity for affected parties to be heard, the Commission has embarked on a course that greatly concerns me. While I understand and sympathize with the motivation behind the decision, it seems clear to me that the fundamental principles of Chapter 120 and Constitutional guarantees of due process prohibit the decision of the majority. As far as I know, until now we have never granted a rate increase without offering the customers a hearing at some point in time.

I understand that the decision here is a Proposed Agency Action and that we are offering affected parties who have actual notice of our order an opportunity to request a hearing. Conceivably that opportunity would be to contest the rate increase -- something that would render the proposed solution to this problem useless since the PAA process on the emergency rates would consume most of the interim period.

Even if, for the sake of argument, a hearing were to be held on the "Emergency Rates" under the PAA process, I question whether an effective opportunity to be heard would be afforded customers. Presumably the hearing would have to be held within a fairly short time span. Likely there would be no time for discovery. Certainly there would be no MFR information filed -- as there would in a "normal" PAA process.

Perhaps most troubling is that customers would not receive individual notice of the pending rate increase. In the normal staff assisted rate case process, customers at least receive notice of a customer meeting where they are notified of the staff's preliminary determination of revenue deficiency and new rates. That occurs approximately 6 months prior to the Commission voting on the staff's recommendation for a PAA. As a point of information, in this case the first notice of a possible rate increase is not scheduled to be received by the customers until February 15, 1995.

I have had reservations about the legal authority of granting the so-called "emergency temporary rates" in the past. Interim rates are explicitly authorized in the law and have specific statutory guidelines for granting a rate increase without a hearing beforehand and are always subject to refund after the opportunity to be heard has been provided. "Emergency temporary rates", by contrast, have no specific legislative authorization and certainly no statutory guidelines for their determination. Even so, I have withheld my objections on those rare occasions where we authorized emergency temporary rates because they have always been subject to refund after the opportunity for hearing. It seemed that customers were not harmed and more likely were helped because the systems that served them were able to continue to be viable.

In this case, however, the already tenuous nature of this type of rate relief has been transformed into something that is legally untenable. These rates are not subject to refund and are no longer "temporary", but in fact are permanent until the assumed rate increase in the staff assisted rate case occurs. No matter what happens in any subsequent proceeding, these revenues will not be subject to refund. Although I agree that it appears very likely that this system will need a substantial rate increase, the majority's assumptions -- no matter how good they are -- are no substitute for the hearing process that is the bedrock of this agency's public protection mandate.

I fear that relief fashioned here -- no matter how well intentioned -- will come back to haunt us. At a minimum, I believe that we will see an increasing number of these requests and will be hard-pressed to deny to other equally deserving companies what we have given this company. Judicial or legislative oversight cannot be far behind.



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.

The action proposed herein 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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on February 9, 1995.

In the absence of such a petition, this order shall become effective on the day 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 this order becomes final and effective on the date described above, any party substantially 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.

LANDIS ENTERPRISES, INC. (LAKE ALTO WATER SYSTEM)  
DOCKET NO. 940973-WU  
CALCULATION OF EMERGENCY RATE INCREASE (WATER)

SCHEDULE NO. 1

ACCOUNT NUMBER	DESCRIPTION	PER UTILITY AUGUST 1994	COMMISSION ADJUSTMENTS FOR EMERGENCY RATES	COMMISSION ADJUSTED REVENUE & O & M
461	Revenue	\$9,598	\$695	\$10,293 *
601	Salaries and Wages - Employees	0	0	0
603	Salaries and Wages - Officers	0	0	0
604	Employee Pensions and Benefits	0	0	0
610	Purchased Water	0	0	0
615	Purchased Power	1,126	0	1,126
616	Fuel for Power Production	0	0	0
618	Chemicals	428	0	428
620	Materials and Supplies	1,354	0	1,354
630	Contractual Services			
	Main	1,370	0	1,370
	Operation	1,800	0	1,800
	Repairs	305	0	305
	Lab	1,096	0	1,096
	Management/Administrative Cost	24,880	(19,080)	5,800
640	Rents	0	0	0
650	Transportation Expenses	0	0	0
655	Insurance Expense	0	0	0
665	Regulatory Commission Expense (\$200 / 4)	0	50	50
670	Bad Debt Expense	0	0	0
675	Miscellaneous Expenses	1,534	0	1,534
	TOTAL O & M EXPENSE	\$33,893	(\$19,030)	\$14,863
	OPERATING LOSS	(\$24,295)		(\$4,570)

GROSS UP FOR REGULATORY ASSESSMENT FEES

\$14,863 / .955 = \$15,563

REVENUE AND PERCENTAGE INCREASE

\$15,563  
(10,293)  
\$5,270 / \$10,293 = 51.20%

\* Annualized revenues calculated based on number of customers and consumption reported on 1993 annual report.