

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Notice of Abandonment of ) DOCKET NO. 941329-WU  
Facility in Alachua County by ) ORDER NO. PSC-95-0843-FOF-WU  
Landis Enterprises, Inc. ) ISSUED: July 14, 1995  
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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 AND APPOINTMENT OF RECEIVER  
AND  
NOTICE OF PROPOSED AGENCY ACTION ORDER ESTABLISHING  
RESPONSIBILITY FOR PAYING REGULATORY ASSESSMENT FEE AND FILING  
ANNUAL REPORT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein requiring Landis Enterprises, Inc., to pay the 1994 regulatory assessment fee and to file the 1994 annual report 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), on behalf of Landis Enterprises, Inc., (LEI), filed a notice of abandonment of Lake Alto Estates Water System (Lake Alto or utility) with this Commission, pursuant to Section 367.165, Florida Statutes. WSI is an affiliate of LEI, providing management services. Lake Alto is a class C utility presently serving 69 customers. LEI purchased the utility on March 8, 1993. We granted LEI Certificate No. 556-W in Order No. PSC 93-1550-FOF-WU, issued March 26, 1993. According to the utility's 1993 annual report, the utility earned revenues in 1993 of \$10,749, and suffered a net operating loss of \$24,126.

The utility applied for a staff-assisted rate case on September 14, 1994, which was docketed as 940973-WU. In Order No.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

PSC-95-0751-FOF-WU, issued June 22, 1995, we granted temporary rates in the event of protest and gave notice of a proposed agency action order granting rates and charges in the staff-assisted rate case. Earlier in that docket, in Order No. PSC-94-1464-FOF-WU, issued November 29, 1994, we approved installment payment plans for the staff-assisted rate case application fee and delinquent regulatory assessment fee for 1993. Later, in Proposed Agency Action Order No. PSC-95-0098-FOF-WU, issued January 19, 1995, we granted the utility emergency rate relief. However, upon protest of the Office of Public Counsel, in Order No. PSC-95-0422-FOF-WU, issued March 28, 1995, we ordered the utility to implement the approved temporary emergency rates only if subject to refund and upon furnishing appropriate security. These rates were not implemented.

ACKNOWLEDGMENT OF ABANDONMENT AND APPOINTMENT OF RECEIVER

On February 14, 1995, Circuit Judge James L. Tomlinson, Circuit Court, Eighth Judicial Circuit, Alachua County, Florida, appointed Berdell Knowles, Post Office Box 579, Gainesville, Florida 32602, the receiver for Lake Alto. Mr. Knowles owns and operates Kincaid Hills Water Company, 3200 S.E. 19th Avenue, Gainesville, Alachua County, Florida 32601-1007.

The order appointing receiver provided that:

- 1) LEI surrender all property, assets, documents, and facilities pertaining to Lake Alto 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 from the customers of the utility 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 Lake Alto as appropriate and necessary.

Following his appointment, the receiver elected to continue the staff-assisted rate case, which we had placed in abeyance in Order No. PSC-95-0422-FOF-WU, remitting in full on March 21, 1995, the balance due of the staff-assisted rate case application fee. As already noted, in Proposed Agency Action Order No. PSC-95-0751-FOF-WU, we approved increased rates and charges for the utility.

The plant may be in need of modification to meet the requirements of the Department of Environmental Protection (DEP). However, the utility has not complied with DEP testing requirements. Specifically, tests for Primary Organics, Secondary Standards, Volatile Organic Contaminants and Radionuclides must be submitted to DEP. Lake Alto is not under any DEP enforcement action. The utility does not hold a consumptive use permit.

Section 367.165(3), Florida Statutes, provides that a receiver operating an abandoned utility shall be considered to hold a temporary authorization from the Commission. Rule 25-30.090(5), Florida Administrative Code, provides that during the pendency of the receivership, the receiver shall be responsible for fulfilling the utility's obligations pursuant to Chapter 367, Florida Statutes, and Chapter 25-30, Florida Administrative Code. Section 367.165(2), Florida Statutes, provides that the receiver shall operate the utility until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service. Thus, we find it appropriate to acknowledge Landis Enterprises, Inc.'s abandonment of the Lake Alto Estates Water System, and the appointment of Berdell Knowles on February 14, 1995, as the receiver for the utility.

RESPONSIBILITY FOR PAYING 1994 REGULATORY ASSESSMENT FEE AND  
FILING 1994 ANNUAL REPORT

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.

We recognize that the receiver could, in some cases, discharge the utility's accrued liability for regulatory assessment fees by advancing funds from its own resources, subsequently recovering

them through increased rates. However, we believe it to be inappropriate to in any way encourage the 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 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 fee for 1994 arose prior to LEI's abandonment. Additionally, LEI collected in full those revenues upon which the fee for 1994 is assessed before the abandonment. Thus, we find it appropriate that LEI be given 60 days from the effective date of this order to pay the past-due regulatory assessment fee for Lake Alto, with penalty and interest, for the calendar year 1994.

Similarly, LEI's obligation to file Lake Alto's annual report for 1994 arose prior to abandonment. Despite the decree of the circuit court, LEI has not turned over its books and records to the receiver. Thus, we also find it appropriate that LEI be required to file the report with the Commission within 60 days of the effective date of this order.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that the abandonment of the Lake Alto Estates Water System by Landis Enterprises, Inc., and the appointment of Berdell Knowles on February 14, 1995, as the receiver for the Lake Alto Estates Water System are herein acknowledged. It is further

ORDERED that Landis Enterprises, Inc., shall be responsible for payment of Lake Alto Estates Water System's regulatory assessment fee for the calendar year 1994. It is further

ORDERED that Landis Enterprises, Inc., shall remit the regulatory assessment fee, with penalties and interest, within 60 days of the effective date of this order. It is further

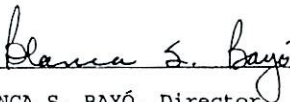
ORDERED that Landis Enterprises, Inc., shall be required to file with the Commission Lake Alto Estates Water System's 1994 annual report. It is further

ORDERED that Landis Enterprises, Inc., shall be required to file the 1994 annual report within 60 days of the effective date of this order. 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 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.



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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.

As identified in the body of this order, our action requiring Landis Enterprises, Inc., to pay the 1994 regulatory assessment fee and to file the 1994 annual report 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.