

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for immediate) DOCKET NO. 941307-WU
relief from liabilities related) ORDER NO. PSC-95-0266-FOF-WU
to water main repairs at PBV) ISSUED: February 28, 1995
Water System in Putnam County by)
Landis Enterprises, 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

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING REQUEST FOR IMMEDIATE RELIEF

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

By letter dated December 5, 1994, Landis Enterprises, Inc. (LEI) requested the Commission to grant immediate relief from liabilities related to water main repairs at the PBV Water System (PBV or the Utility) in Putnam County. LEI made this request after one of the Utility's customers stated its intention to deduct from its bills costs the customer undertook for repairs to a utility line on his property.

PBV, granted a certificate of authorization in Order No. PSC-94-0804-FOF-WU, issued June 29, 1994, provides water service to approximately 60 residential and general service customers near Hastings, Florida. In 1993, PBV reported revenues of \$14,299 and an operating loss of \$16,816. The Utility has applied for a staff-

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assisted rate case, which is pending in Docket No. 940974-WU. It is owned by Landis Enterprises, Inc. (LEI), which purchased the system from P.B.V. Corporation on June 3, 1993, after its appointment as the Utility's receiver earlier that year. P.B.V. Corporation abandoned the utility on March 14, 1993. On December 23, 1994, LEI noticed the Commission of its intention to abandon the system on or before February 28, 1995.

LIABILITY

LEI maintains that the Utility should not be held responsible for repairs to water mains located outside the planned easements of the PBV development, which is largely made up of mobile homes. The mains lie in the center of the lots, instead of near property boundaries, where utility easements are normally located. As a result, some of the mobile homes in the service area, along with carports, patios, and other personal property, are located over the utility's mains. Because of the structures involved, line repair can be difficult and expensive. The repairs in question here were made to leaks found in the main beneath the customer's patio. LEI states that the Utility should be responsible only for the mains within the planned easements, and requests that we determine the party responsible for the costs that one of its customers incurred in repairing a water main leak on the customer's property.

LEI appears to rely on customer deed language regarding the establishment of easements and the construction, installation, and maintenance obligations of the utility company. The restrictions provide that, in the event of any construction, maintenance or repair on any utility installation, interfering structures or vegetation may be removed without cost to the utility company. However, Chapter 367, Florida Statutes, provides for exclusive jurisdiction over privately owned water and wastewater utilities, and supersedes conflicting deed restrictions.

LEI contends that it purchased only the plant assets, disavowing ownership of the distribution mains. If, nevertheless, the Utility were to be held responsible for maintenance, it further contends that it must have free access. By this, the Utility appears to mean that obstructions, such as carports or patios, must be removed at the property owner's expense. LEI also disputes the customer's right to offset its water bill with the costs of the repairs, asserting that the Utility may discontinue service were the customer to do so.

Last, LEI alleges that holding it to be the responsible party would set a precedent having serious economic impact. We find that the responsibilities of the Utility are clearly defined in Rules

25-30.225 (5), and 25-30.231, Florida Administrative Code. These Rules establish that the utility is responsible for any maintenance and repair involving any of its facilities and equipment used to deliver service up to and including the point of delivery into piping owned by the customer. Unless specifically relieved by the Commission from this obligation, the utility shall operate and maintain its property in a safe, efficient and proper condition. We have never relieved PBV of any of the obligations established in the aforementioned Rules. Therefore, the Utility's disavowal of distribution system ownership notwithstanding, the responsibility for the repairs in this instance is solely the Utility's responsibility. It may be observed that, since the main in question serves multiple customers, it would hardly be practical to hold individual property owners responsible for maintenance and repairs.

Furthermore, we have ruled similarly in other instances. See, e.g., Order No. PSC-94-0210-FOF-WS, issued February 21, 1994, Tamiami Village Utility v. Cynwyd Investments, Order No. PSC-93-0022-FOF-WU, issued January 5, 1993, Floralino Properties, Inc. v. Warner, Order No. 20653, issued January 24, 1989, Floralino Staff Assisted Rate Case, and Order No. 22160, issued November 7, 1989, Lake Tarpon Homes, Inc. Staff Assisted Rate Case. In all of these orders, we found the utility responsible for maintaining its distribution system no matter where the lines were located. Although the normal arrangement is to locate water mains in property easements, the maintenance obligations apply even if they are located elsewhere. To avoid the physical obstruction problem in instances like the present one would mean relocating the mains to customer property lines. For a small utility, the cost to do this could be prohibitive.

We acknowledge that the liability for repairs, as we have found it in this and several other instances, may be burdensome to the utility. However, a utility must perform its obligation to make repairs and replacements in circumstances such as the present one, as Sections 367.111 and 367.121, Florida Statutes, require. Because of LEI's impending abandonment, this responsibility will fall to an appointed receiver or a new owner of this utility.

REIMBURSEMENT

The Commission does not have the authority to award money for damages to personal property not covered by homeowners insurance. Nonetheless, we expect the utility to pay for expenses related to the repair of the utility's property, including expenses for vegetation replacement, pavement repair, and structure restoration.

We would note that it is always inadvisable that any customer engage in repairs to utility property. However, in this instance, four days lapsed after the customer notified the Utility about the leak, and before the customer undertook the repairs. The customer's decision to undertake the repairs might have been obviated had the Utility's response been prompt. To hasten the repair, the customer removed a concrete portion of a patio that was located over the leaking main, using a rented concrete cutter. The customer's costs amounted to \$120.27. We conclude that the Utility's lack of responsiveness prompted the customer's involvement. Therefore, we find it appropriate to hold the Utility responsible to reimburse the customer's costs in the amount of \$120.27. We find further that the appropriate method of reimbursement is through credits applied to the customer's bills over a reasonable period of time.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the request of PBV Water System, through its owner, Landis Enterprises, Inc., for immediate relief from liability for water main repairs outside planned easements is denied. It is further

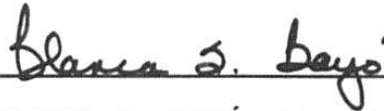
ORDERED that PBV Water System shall reimburse the customer for the costs incurred by the customer to repair the water main leak on its property in the amount of \$120.27 by means of credits applied to the customer's water bills over a reasonable period of time. It is further

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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, 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.

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By ORDER of the Florida Public Service Commission, this 28th
day of February, 1995.



BLANCA S. BAYO, 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.

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 March 21, 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.

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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.