

FLORIDA PUBLIC SERVICE COMMISSION  
Fletcher Building, 101 East Gaines Street  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

June 15, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (MCROY, CHASE)  
DIVISION OF LEGAL SERVICES (PELLEGRINI)

RE: DOCKET NO. 941331-WS - LANDIS ENTERPRISES, INC. - NOTICE OF  
ABANDONMENT OF FACILITY.  
COUNTY: VOLUSIA

AGENDA: JUNE 27, 1995 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR  
ISSUE 3 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS:

THIS ITEM SHOULD BE HEARD BY THE FULL  
COMMISSION.

THIS RECOMMENDATION SHOULD IMMEDIATELY  
PRECEDE THE ITEM IN DOCKET NO. 940982-WS.

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CASE BACKGROUND

Pine Island Utility Corporation Water and Wastewater Corporation (Pine Island Utility) is a class C utility presently serving 86 Water and 71 Wastewater customers. In its 1993 annual report, the utility reported operating revenues for water of \$7,754 and for wastewater of \$8,456. It reported net operating income 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 Water Spectrum, Inc., (WSI) receiver for Pine Island Utility. WSI is an affiliate of Landis Enterprises, Inc., (LEI), providing management services.

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, the Commission 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, the Commission authorized rates for non-metered water and wastewater customers and ordered the docket be kept open in order to monitor the utility's efforts to correct a number of water and wastewater system deficiencies. Also in that docket, in Order No. PSC-94-1053-FOF-WS, issued August 29, 1994, the Commission denied the utility's petition for further rate relief and again ordered the docket be kept open in order to monitor 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, the Commission, in that docket, permitted the utility to pay the staff-assisted rate case application filing fee and the delinquent 1993 regulatory assessment fees according to installment plans. The docket was placed in 30-day abeyance to allow the utility a further opportunity to address system deficiencies. Following WSI's December 23, 1994, notice, on behalf of LEI, of its intention to abandon the utility, pursuant to Section 367.165, Florida Statutes, in Order No. PSC-95-0302-FOF-WS, issued March 3, 1995, in the same docket, the Commission authorized emergency rate relief to be implemented upon the appointment of a receiver for the utility. Docket No. 910276-WS was ordered closed and Docket No. 940982-WS was ordered to remain in abeyance until the appointment of a substitute receiver and the receiver's representation to the Commission that it wished to reactivate the staff-assisted rate case.

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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. On March 17, 1995, Volusia County requested that the Commission find it exempt pursuant to Section 367.022(2), Florida Statutes, and Rule 25-30.090(6), Florida Administrative Code.

This recommendation is being brought to the Commission to acknowledge WSI's abandonment and the appointment of Volusia County as receiver for Pine Island Utility, and to address the responsibility for the Utility's 1994 regulatory assessment fees.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission acknowledge Water Spectrum, Inc.'s abandonment of Pine Island Utility Corporation's Water and Wastewater System and the appointment of Volusia County as receiver for the utility?

**RECOMMENDATION:** Yes, the Commission should acknowledge Water Spectrum, Inc.'s abandonment of Pine Island Utility Corporation's Water and Wastewater System and the appointment of Volusia County as the receiver for the utility. (MCROY)

**STAFF ANALYSIS:** Pine Island Utility is a small water and wastewater utility with 86 water and 71 wastewater customers located in Volusia County. On December 23, 1994, WSI, the former receiver for the utility, on behalf of LEI, notified the Commission of its intent to abandon the utility within sixty days, pursuant to Section 367.165, Florida Statutes. On February 28, 1995, Volusia County was appointed substitute receiver for Pine Island Utility.

In the order appointing the receiver, which is herein attached, it was ordered 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;
- 4)The receiver shall make extensions, expansions, repairs, replacements, and improvements to Pine Island Utility as appropriate and necessary.

According to the 1993 annual report filed by WSI, the utility had a loss of (\$24,126) for the year. Volusia County has been

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sent a copy of Pine Island Utility's tariff and most recent annual report.

Both the water and wastewater systems have been and are currently out of compliance with applicable environmental regulations. The water system falls under the purview of the Volusia County Public Health Unit (VCPHU), while the wastewater systems falls under the purview of the Department of Environmental Protection (DEP).

Based on the foregoing, staff recommends that the Commission acknowledge WSI's abandonment of Pine Island Utility and the appointment of Volusia County as substitute receiver for the utility.

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**ISSUE 2:** Should the Commission acknowledge that Volusia County is exempt from Commission regulation as receiver of Pine Island?

**RECOMMENDATION:** Yes, the Commission should acknowledge that Volusia County is exempt pursuant to Section 367.022(2), Florida Statutes, as receiver for Pine Island. (MCROY)

**STAFF ANALYSIS:** On March 17, 1995, staff received a request from Douglas M. Weaver, Assistant County Attorney, Volusia County, for an exemption 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. Therefore, the Commission should acknowledge the exempt status of Volusia County as receiver for Pine Island.

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**ISSUE 3:** Who should be responsible for filing Pine Island Utility Corporation's Water and Wastewater System's annual report and regulatory assessment fees for 1994?

**RECOMMENDATION:** Water Spectrum, Inc. should be responsible for the payment of regulatory assessment fees due for calendar year 1994 and up to February 28, 1995, the date a substitute receiver was appointed. The regulatory assessment fees due for 1994 should be filed within 60 days from the effective date of the order to be issued upon this recommendation. No annual report for 1994 should be required to be filed. (CHASE)

**STAFF ANALYSIS:** 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.

The utility was first abandoned by its owner, Pine Island Utility, in December, 1992, and then in December, 1994, by its first receiver, WSI, acting as the managing agent for Landis Enterprises, Inc. Pine Island Utility has dissolved. Staff recognizes that the substitute receiver, Volusia County, can, through increased rates, recover sufficient revenues to pay the utility's regulatory assessment fees. However, staff believes 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 that fee. Moreover, the Commission's 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.

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. Thus, staff believes that WSI should be held responsible to pay the utility's 1994 regulatory assessment fees up to February 28, 1995, the date a new receiver was appointed. WSI should be ordered to pay the fees due for 1994 within 60 days of the effective date of the order to be issued upon this recommendation.

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Section 367.145, Florida Statutes, provides that a governmental authority to whom control of a regulated utility passes is not liable for any fees owed the Commission by the utility as of the passing date. The 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.

Since Volusia County has requested exemption as a governmental authority acting as receiver pursuant to Section 367.022(2), Florida Statutes, and Rule 25-30.090(6), Florida Administrative Code, no regulatory assessment fees will be owing after the date Volusia County was appointed receiver of the system.

As with the regulatory assessment fees, the obligation to file Pine Island's annual report for 1994 arose prior to abandonment by WSI. However, since Volusia County has requested exemption as the receiver for Pine Island, the Commission will not regulate this system as long as the county is the receiver. Therefore, staff believes there is no need for the 1994 annual report and recommends that WSI not be required to file the report.



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**ISSUE 4:** Should this docket be closed?

**RECOMMENDATION:** Yes, this docket should be closed if no person whose interests are substantially affected by the proposed action files a protest within the 21 day protest period. (PELLEGRINI)

**STAFF ANALYSIS:** Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, this docket can be closed.

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ATTACHMENT

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ATTACHMENT NOT AVAILABLE ON THE NETWORK