



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison St.
Room 812
Tallahassee, Florida 32399-1400
850-488-9330

June 21, 2000

RECEIVED-PPSC
00 JUN 21 PM 4: 08
RECORDS AND REPORTING

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: The Citizens Petition for the Public Service Commission to Require Lindrick Services Corporation to Show Cause why it should not be fined for Specified Violations of Chapter 367, Florida Statutes and Lawful Commission Order Docket No. 000756-SU

Dear Ms. Bayó:

Enclosed are originals and fifteen copies of Citizens Petition for Show Cause and a Request for Oral Argument for filing in your office.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Burgess
Deputy Public Counsel

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

SCB/dsb
Enclosures

Petition Show Cause
DOCUMENT NUMBER-DATE
07583 JUN 21 8
FPSC-RECORDS/REPORTING

Req. Oral Argument
DOCUMENT NUMBER-DATE
07584 JUN 21 8
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: The Citizens Petition for the Public)
Service Commission to Require Lindrick)
Services Corporation to Show Cause why)
it should not be fined for Specified)
Violations of Chapter 367, Florida Statutes)
and Lawful Commission Order)
_____)

ORIGINAL

DOCKET NO. 000756-SU
FILED: June 21, 2000

CITIZENS PETITION FOR SHOW CAUSE

The Citizens of the State of Florida, through their attorney, the Public Counsel, pursuant to Sections 350.0611, 367.111, 367.121, and 367.161, Florida Statutes, and Rule 28-106.201, Florida Administrative Code, hereby Petition the Public Service Commission (the Commission) to open a docket for the purpose of requiring Lindrick Services Corporation (Lindrick) to show cause why it should not be fined \$5,000.00 per day for each day that it is in arrears on payments for water delivered to Lindrick by the City of New Port Richey. Further, the Citizens seek the Public Service Commission to require that Lindrick show cause why it should not be fined \$5,000.00 for each occurrence of excess concentration of chlorides in the wastewater pumped by Lindrick to the treatment plant owned and operated by the City of New Port Richey. The Citizens submit:

1. The agency affected is the Florida Public Service Commission (PSC), 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.
2. Petitioners are the Citizens of the State of Florida and are represented by:

Jack Shreve, Public Counsel
Stephen C. Burgess, Deputy Public Counsel
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

DOCUMENT NUMBER-DATE
07583 JUN 21 8
FPSC-RECORDS/REPORTING

3. Pursuant to Section 350.0611, the Public Counsel is empowered to petition, in the name of the Citizens of the State of Florida, for the commencement of any proceeding or action.

4. The Citizens allege the following issues of material fact:

a. The Citizens have reviewed a memorandum written by Gerald J. Seeber, City Manager of New Port Richey to the Mayor and City Council of New Port Richey (attachment). This memorandum reflects Mr. Seeber's assertion that Lindrick is delinquent in its payments to New Port Richey for the water Lindrick has received. Mr. Seeber also states that Mr. Joseph Borda, president of Lindrick, has adopted a very cavalier attitude about his delinquency. Mr. Seeber states:

In an attempt to seek a resolution of this matter earlier this week, I phoned Mr. Joseph Borda, President LSC, on Tuesday, June 13th to find out why LSC has not paid its bill. He refused to tell me why the bill had not been paid. He indicated that he was "thinking about it" and that he would respond to me soon. I reminded Mr. Borda of the June 18th deadline; he indicated that he "was looking at the matter" and that he would respond to the City.

b. In addition, Mr. Seeber states that on at least eight occasions Lindrick has violated the contractual threshold of chloride concentration for the sewage that New Port Richey treats for Lindrick.

c. As a result of Lindrick's contract violations and casual attitude about the violations, it appears that New Port Richey is seriously considering the termination of its contractual arrangements with Lindrick.

d. Pursuant to Section 367.111(2), Florida Statutes, each Lindrick customer is entitled to safe, efficient and sufficient service consistent with the proper operation of the

utility in the public interest. By willfully jeopardizing its contract with New Port Richey, as specified in this motion, Lindrick appears to be in violation of Section 367.111(2).

e. The customers' rates as established by Order No. PSC-99-1883-PAA-SU, provide Lindrick all direct and peripheral costs arising from the wastewater contractual agreement with New Port Richey. The customers therefore have purchased the right to expect Lindrick to meet its obligations under this contract. Should New Port Richey terminate this contract, Lindrick's customers could be without service. It would be an absolute travesty of the regulatory process for Lindrick: to collect rates to cover its contractual obligations; to willfully default on these contractual obligations; and thereby to fail to provide the services that it has promised its customers in exchange for the rates they are paying.

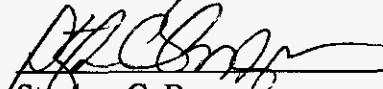
5. Under Section 367.161, Florida Statutes, the Commission has the authority to impose fines on any utility which knowingly refuses to comply with any provision of Chapter 367, or any lawful order of the Commission.

6. As relief, the Citizens seek the Commission to open a new docket for the purpose of issuing a Show Cause on the matters specified herein. As a procedural alternative, if the Commission deems it more appropriate, the Citizens seek the Commission to take up these issues in Docket No. 980242-SU and issue a Show Cause through that docket.

WHEREFORE, the Citizens of the State of Florida hereby petition the Public Service Commission to demand that Lindrick Service Corporation show cause why it should not be fined for the violations specified herein.

Respectfully submitted,

JACK SHREVE
Public Counsel



Stephen C. Burgess
Deputy Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
(904) 488-9330

Attorneys for the Citizens
of the State of Florida

**CERTIFICATE OF SERVICE
DOCKET NO.**

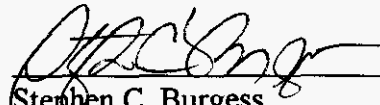
I HEREBY CERTIFY that a true and exact copy of the above and foregoing PETITION TO SHOW CAUSE has been furnished by hand-delivery* or U.S. Mail to the following parties of record this 21st day of June, 2000:

Ralph Jaeger, Esquire*
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Lindrick Service Corporation
4925 Cross Bayou Boulevard
New Port Richey, FL 34656-1176

Kenneth A. Hoffman, Esquire
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, FL 32302

Representative Heather Fiorentino
6231 Grand Boulevard
New Port Richey, FL 34652



Stephen C. Burgess
Deputy Public Counsel

MEMORANDUM

TO: THE HONORABLE MAYOR AND CITY COUNCIL
DATE: June 16, 2000
SUBJECT: STATUS OF UTILITY CONTRACT - LINDRICK SERVICE CORPORATION

Issue:

The City will likely be in a position later this month to consider terminating utility service to the Lindrick Service Corporation. Lindrick is in default of specific provisions of its agreements with the City.

Background:

The City of New Port Richey has entered into two separate contracts with Lindrick Service Corporation. The first of these addresses the provision of potable water supply by the City to Lindrick Service Corporation. The second involves the provision of bulk wastewater treatment services to the private utility.

• **Water:**

Finance Director Richard Snyder has advised me that Lindrick Service Corporation is delinquent on its payment for water delivered during the month of April. The initial invoice was due in May. Payment was not received by the scheduled date and a 30-day notice was provided to Lindrick Service Corporation to cure its default under the terms of our *Water Sale and Purchase Agreement*. The period for making payment to the City, with accrued interest and penalties, will expire on Monday, June 19th. At that time, if payment has not been made, the City may terminate its *Water Sale and Purchase Agreement* with Lindrick Service Corporation. In essence, the City would shut off the water, affecting service to about 8,000 Lindrick customers. In the event that payment with accrued interest and penalties is received by that date, then the contract would remain in effect.

• **Wastewater:**

Public Works Director Thomas O'Neill has advised me that Lindrick Service Corporation has repeatedly violated the chloride limits in its agreement with the City for the treatment of bulk wastewater.

The contract provides that the raw wastewater pumped to the City's plant by Lindrick Service Corporation may have a concentration of chlorides no greater than 600 mg/liter. Lindrick Service Corporation has exceeded this 600 mg/liter limitation on at least eight (8) occasions through April and May. Verification of the content of the

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wastewater has been completed both at the City's laboratory facility and with an independently certified testing lab. The City has provided Lindrick Service Corporation with formal notification of its requirement to reduce the chloride concentrations entering the City's plant. Mr. O'Neill has provided Lindrick Service Corporation with the required notifications set forth in the *Bulk Wastewater Agreement* and Lindrick Service Corporation has until Thursday, June 15th to provide a response on its methods for correcting chloride concentrations.

If Lindrick Service Corporation takes no action, then the staff will likely recommend to the City Council that a formal notice of termination of the bulk wastewater agreement be sent to Lindrick Service Corporation. The City cannot allow high concentrations of chloride-tainted wastewater into its Wastewater Treatment Plant. To do so jeopardizes the quality of the City's reclaimed water effluent that is used for irrigation throughout West Pasco and will eventually result in violations of the City's operating permits issued by the Florida Department of Environmental Protection.

Litigation Expense:

If the City is forced to implement the remedies available for default under either the *Bulk Water Sale and Purchase Agreement* or the *Bulk Wastewater Agreement*, I suspect that the City will incur expense in dealing with this matter in court. I do not anticipate that Lindrick Service Corporation would fail to contest any action by the City to determinate these agreements. However, Lindrick Service Corporation is leaving the City with no alternative.

Options for Water Sale & Purchase Agreement:

The staff has number of suggestions for the Council to consider in this matter. The date for possible termination is upon us.

1. The City could elect to take no immediate action and await payment from Lindrick Service Corporation. The amount of interest and penalties would continue to accrue.
2. The City could elect to terminate the agreement. If the City were to contract again with LSC for water service, a new agreement would need to be written and executed.
3. The City could elect to terminate service to LSC. This option would have an immediate dramatic impact on the public health and safety of the residents served by LSC, approximately 8,000 persons. The City staff believes that LSC would be unable to meet demand or maintain pressures in its system without the City's supply.
4. The City could elect to file a suit seeking declaratory judgement allowing the City to shut off the water to LSC. This option may reduce the City's exposure to claims from the LSC customers.

11.0

5. The City could elect to file a suit seeking specific performance of the Water Sale & Purchase Agreement, in effect, requiring LSC to pay the City for the water product received. This option would likely take 3 or 4 years to reach a trial and cost the City substantial sums for fees.

In an attempt to seek a resolution of this matter earlier this week, I phoned Mr. Joseph Borda, President of LSC, on Tuesday, June 13th to find out why LSC has not paid its bill. He refused to tell me why the bill had not been paid. He indicated that he was "thinking about it" and that he would respond to me soon. I reminded Mr. Borda of the June 18th deadline; he indicated that he "was looking at the matter" and that he would respond to the City. It appears that he has some type of plan in mind; I suspect that his recent actions are related to the City's stop work order and denial of permits for the two wells placed near Grand Boulevard on the southern border of the City.

Direction Requested:

I have placed this matter on the June 20th agenda to give the City Council the opportunity to review these matters and to provide the staff with policy direction on its preferred course of action.



Gerald J. Seeber
City Manager

CM006642 (CO2000/12518)

City of New Port Richey

"The Gateway To Tropical Florida"

5919 Main Street, New Port Richey, Florida 34652

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 9, 2000

Mr. Joseph Borda
Lindrick Service Corporation
C/O Borda Engineers
Centre Chestnut Street
Merchantville Train Station
Merchantville, NJ 08109

Re: Penalties for Delinquent Bulk Water Account #193390-34514

To Whom It May Concern:

This letter will serve as official notice that your Bulk Water account payment of \$23,918.49, for the May 5, 2000 billing, due June 6, 2000, is now delinquent, and you are in default of your service contract with the City of New Port Richey. In compliance with your service contract we have applied a five (5) percent late fee to your account of \$1,195.93. You are also subject to a twelve (12) percent per annum interest charge on the outstanding balance until paid in full. Beginning as of June 6, 2000 the per diem will be \$15.91 that will be applied to your account either at the time of payment or within 30 days whichever comes first. This brings the balance due including penalties on both past due payments to \$49,562.12, not including the 12% interest charge, as shown below:

<u>Due Date</u>	<u>Billed Amount</u>	<u>5% - Penalty</u>	<u>Sub-Total</u>
5/5/2000	\$ 23,283.52	\$ 1,164.18	\$ 24,447.70
6/6/2000	23,918.49	1,195.93	<u>25,114.42</u>
Total Due (Not including Interest):			\$ 49,562.12

This letter will also serve as official notice that you are still in default of your Water Sale and Purchase Agreement with the City of New Port Richey, and you must cure this default as previously notified by June 18, 2000.

Very truly,



Mary I. Healey
Utilities Billing Supervisor

M:H

CC: Helen McNeil, Lindrick Service Corp. Fax #727-848-4886
Richard C. Snyder, Finance Director
Gerald Seaber, City Manager
Thomas Morrison, City Attorney

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