

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LAKE SHORE WATERWORKS, INC. PETITION )  
FOR ABANDONMENT ) CASE NO. 96-117

O R D E R

On behalf of Lake Shore Waterworks, Inc. ("Lake Shore"), Robert Morris ("Petitioner"), by counsel and through his daughter and attorney-in-fact Trudy McFarlane, petitioned the Commission for permission to abandon the water system owned and operated by Lake Shore and for the appointment of a receiver.<sup>1</sup> The Petitioner responded to a data request issued by the Commission on July 19, 1996. Additional information from the Petitioner was received on September 20, 1996. While a hearing was scheduled for September 26, 1996, it was canceled after Lake Shore filed a motion, accompanied by an affidavit from the Petitioner, asking the Commission to proceed with the abandonment proceedings, waiving its right to appear at a hearing, and stipulating to all proceedings of record. Lake Shore renewed its request that the system be declared abandoned and that the Franklin Circuit Court be petitioned to appoint a receiver to operate and manage the water system.

Lake Shore is owned by Thornburg and Morris Development Company, Inc. ("T & M Development"), which in turn is owned by the Petitioner, Eleanor Leese of Schereville,

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<sup>1</sup> While the original petition sought the Commission's permission to abandon the water system, the Petitioner in fact seeks a determination from the Commission that the system has been abandoned.

Indiana, and Phillip Morris of Lakeland, Florida. The Petitioner owns 50 percent of the issued and outstanding stock of T & M Development, while Ms. Leese and Mr. Morris each own 25 percent. T & M Development itself was created in 1973 to develop property in Hamlin, Kentucky. Except for the operation of Lake Shore, the corporation ceased to do business approximately 14 years ago. The corporation has not had a profit for several years, and its only assets other than Lake Shore is approximately 60 acres of undeveloped land which it has unsuccessfully attempted to sell.

The Petitioner personally and single-handedly oversaw the daily operation of Lake Shore for over fifteen years, but due to the fact that he now suffers from dementia and cerebrovascular disease and has had at least two recent strokes, he is no longer physically capable of operating the utility.

Mr. Morris, by means of an affidavit, indicated his acquiescence in the petition for abandonment filed on behalf of the Petitioner, stating that due to his age, health, and place of residence he was unable to oversee the daily operation of Lake Shore. He also requested that the Commission declare Lake Shore abandoned and to initiate formal action to have a receiver appointed. While efforts were made to contact Ms. Leese regarding the petition filed by the Petitioner, these efforts were not successful. Due to her failure to respond in any way, it may be assumed that Ms. Leese has no interest in this proceeding. Even assuming she was able, it does not appear likely that Ms. Leese would be willing to assume the daily operations of Lake Shore. In any event, with the Petitioner and Mr. Morris in agreement, the holders of 75 percent of the stock in T & M Development, the actual owner of Lake Shore, advocate and acquiesce in this abandonment proceeding.

Lake Shore currently provides water to 64 customers. The system is old and in disrepair. Service is not metered. It has no office. Customers pay an annual fee for service, which is the equivalent of five dollars a month.<sup>2</sup> Many customers, due to the company's situation, have ceased to pay even this nominal amount. Lake Shore's customers were apprised of this proceeding, but none intervened.

Attempts to sell T & M Development have been unsuccessful. Attempts to give T & M Development to the Keniana Homeowner's Association have been rejected.<sup>3</sup> The Keniana Homeowner's Association has, however, gone on record to express its willingness to be appointed as receiver if Lake Shore is determined to be abandoned.

Trudy McFarlane, the Petitioner's daughter and attorney-in-fact, attempted to keep Lake Shore in operation after her father became unable to do so, but with limited success. She is not a certified operator nor does she have the time, or the inclination, to operate a water works system. She has no ownership interest in the corporation, but was merely attempting to see to her father's affairs. Ms. McFarlane was assisted in her attempt to operate the water system by Frank Lucas, who is also not a certified operator, is in his late sixties, and is legally blind. Despite their best efforts to operate Lake Shore in accordance with the statutory and regulatory requirements, the system has been barely functioning. Lake Shore is currently in violation of several Commission regulations as well as several

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<sup>2</sup> Lake Shore has been charging this same annual fee since at least 1976 and has never filed a rate case, or any other case until the present one, with the Commission.

<sup>3</sup> Lake Shore provides service to the Keniana Subdivision as well as part of the Hamlin community.

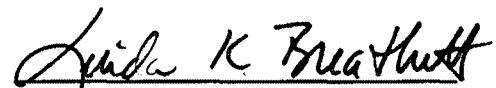
regulations of the Natural Resources and Environmental Protection Cabinet's Division of Water.

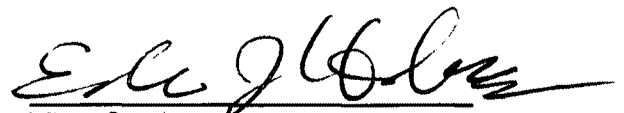
Due to the owners' incapacity, inability, and unavailability, Lake Shore has, for all practical purposes, been abandoned. It should therefore be declared abandoned and, pursuant to KRS 278.021(1) after a utility is determined to be abandoned, the Commission should petition the Franklin Circuit Court for an order attaching the assets of the utility and placing it under the sole control and responsibility of a receiver.

IT IS THEREFORE ORDERED that Lake Shore's petition for abandonment is granted. The Commission hereby determines that Lake Shore has been abandoned and will proceed accordingly pursuant to KRS 278.021.

Done at Frankfort, Kentucky, this 14th day of October, 1996.

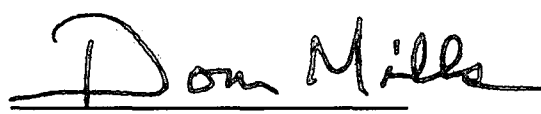
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