

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of abandonment of water system  
in Lee County by Bayshore Utilities, Inc.

DOCKET NO. 120104-WU  
ORDER NO. PSC-12-0345-FOF-WU  
ISSUED: July 5, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman  
LISA POLAK EDGAR  
ART GRAHAM  
EDUARDO E. BALBIS  
JULIE I. BROWN

ORDER ACKNOWLEDGING ABANDONMENT AND  
CANCELLING CERTIFICATE NO. 129-W

BY THE COMMISSION:

Bayshore Utilities, Inc. (Bayshore or Utility) is a Class C water utility providing service in Lee County. The Utility was issued Certificate No. 129-W on April 6, 1973,<sup>1</sup> and currently serves approximately 191 residential customers in the Yacht Club Colony subdivision located in North Fort Myers, Florida. The Utility is located in the South Florida Water Management District. Bayshore's 2010 Annual Report indicates that the Utility had gross operating revenues of \$13,763 and a net operating loss of \$5,874.

During 2008 and 2009, Bayshore was found to be in violation of several Department of Environmental Protection (DEP) drinking water standards. DEP determined that nothing could be done to the existing facilities to ensure that the water supplied to customers would meet DEP's primary and secondary drinking water standards. On April 15, 2010, Bayshore and DEP entered into a Consent Order that required the Utility to either connect to Lee County Utilities or construct a membrane water treatment plant. Further, the Utility was required to abandon the existing water treatment facility following construction of the county interconnect or membrane plant.

Bayshore was subsequently issued a permit to construct a reverse osmosis membrane water treatment facility. However, the Utility failed to commence construction of the reverse osmosis plant in accordance with the Consent Order. DEP determined that the water quality was continuing to deteriorate and the Utility was jeopardizing the public health of its customers by failing to upgrade its facility. DEP petitioned the Circuit Court to request enforcement of the Consent Order and injunctive relief. On January 6, 2012, the Court ordered Bayshore to commence construction of the reverse osmosis system with 20 days and complete construction

<sup>1</sup> See Order No. 5707, issued April 6, 1973, in Docket No. C-71599-W, In re: Application of James L. and Leta M. Nolton d/b/a Bayshore Utility Company for a certificate to operate an existing water system in Lee County.

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within 120 days of the entry of the Order. The enforcement proceedings were finalized on April 5, 2012, when the Circuit Court<sup>2</sup> ruled that by failing to comply with the Court's Order to commence construction within 20 days, the owner of Bayshore had constructively abandoned the Utility. We find that the Circuit Court's Order serves as the Utility's 60-day notice of abandonment, in conformance with Section 367.165(1), Florida Statutes (F.S.). On May 7, 2012, the Circuit Court appointed Lee County as receiver of the Utility.

We have jurisdiction to acknowledge the abandonment of the utility system by Bayshore and the appointment of Lee County as the receiver, and to cancel Certificate No. 129-W pursuant to Sections 367.022 and 367.165, F.S., and Rule 25-30.090, Florida Administrative Code (F.A.C.).

When a utility is abandoned, Section 367.165(2), F.S., requires the county to petition the circuit court for the appointment of a receiver. Such receiver can be the county or any other person or entity approved by the court such as a homeowners association. The responsibility of the receiver is to operate the utility efficiently and effectively from the date of abandonment until disposition of the property. By Order dated May 7, 2012, the Circuit Court acknowledged Lee County's petition to appoint a receiver, and appointed the County as receiver of the Utility in Case No. 12CA-1245.<sup>3</sup> Pursuant to Rule 25-30.090(3), F.A.C., within 10 days of the appointment of the receiver by the Circuit Court, the receiver shall request from the Commission a copy of the Utility's tariff and most recent annual report. A copy of the Utility's tariff and most recent annual report has been sent to the County.

As discussed in the case background, this case is unique because the abandonment was required by court order rather than being initiated by the Utility, in order to protect the health and welfare of the utility's customers. The Circuit Court's Order specified that all ownership interests in the Utility's water system would be transferred to the County if the assets were not sold or otherwise disposed of by the receiver within 90 days. On May 9, 2012, the County advised us of its intent to accept ownership of the Utility's facilities and requested that we expressly release Bayshore from our jurisdiction. Pursuant to Section 367.022(2), F.S., utility systems owned, operated, managed, or controlled by governmental authorities are exempt from Commission regulation.

Rule 25-30.110(3), F.A.C., requires that a water or wastewater utility which is subject to our jurisdiction as of December 31 of that year file an annual report. Bayshore is current on its annual reports through 2010, however, the Utility has not filed its annual report for 2011. The assessed penalty shall be set at \$123 as of May 11, 2012. The penalty shall continue to accrue at \$3/day until the annual report is filed. Because the Utility will not be jurisdictional as of December 31, 2012, no annual report needs to be filed for 2012.

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<sup>2</sup> Case No. 11-CA-003289, Twentieth Judicial Circuit in and for Lee County, Florida.

<sup>3</sup> Order Appointing Receiver, Case No. 12CA-1245, In re: Lee County, Florida a political subdivision of the State of Florida vs. Bayshore Utilities, Inc., a/k/a Bayshore Utility Company (Fla 20<sup>th</sup> Cir. Ct. May 7, 2012).

Cancellation of the Utility's certificate does not relieve the Utility's obligation regarding outstanding regulatory assessment fees (RAFs) for 2011 and RAFs accrued through appointment of the receiver on May 7, 2012. Notices of delinquency for failure to remit the RAFs for 2011 have been sent to the Utility and no payment has yet been received. Since the 2011 Annual Report is delinquent, we are unable to calculate the 2011 RAFs. However, based on the Utility's 2010 revenues of \$13,763, we estimate that Bayshore owes 2011 RAFs of \$619 plus penalty and interest of \$93 and \$19, respectively, through May 7, 2012. In addition, Bayshore is responsible for the RAFs for January 1, 2012 through May 7, 2012, which will be due by March 31, 2013. Staff will continue to work with the Utility to obtain the outstanding annual report and RAFs, and will bring the matter to us in a separate docket in the future if necessary.

Based on all the above, we acknowledge the abandonment of Bayshore pursuant to Section 367.165, F.S., and appointment of Lee County as the receiver for the Utility. Certificate No. 129-W shall be cancelled effective May 7, 2012.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the abandonment of Bayshore Utilities, Inc. and appointment of Lee County as the receiver for the Utility is hereby acknowledged. It is further

ORDERED that Certificate No. 129-W is cancelled effective May 7, 2012. It is further

ORDERED that Bayshore Utilities, Inc. shall file its Annual Report for 2011 and shall submit payment for the outstanding regulatory assessment fees due for 2011. It is further

ORDERED that Bayshore Utilities, Inc. shall submit payment for regulatory assessment fees which accrued for the period from January 1, 2012 through May 7, 2012 on or before March 31, 2013. It is further

ORDERED that staff shall continue to work with Bayshore Utilities, Inc. to obtain the outstanding annual report and regulatory assessment fees, and will bring the matter to the Commission in a separate docket in the future if necessary. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 5th day of July, 2012.



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HONG WANG  
Chief Deputy Commission Clerk  
Florida Public Service Commission  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, 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.