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MEMORANDUM

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June 30, 1998

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CROSBY) *[Signature]*

RE: DOCKET NO. 971269-WS - APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL OF EAST MARION SANITARY SYSTEMS, INC. AND EAST MARION WATER DISTRIBUTION, INC. IN MARION COUNTY FROM DEL-AMERICAN/FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF OSCEOLA COUNTY TO HERBERT HEIN

98-0928-FOF

Attached is an ORDER APPROVING TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL, APPROVING REQUEST TO OPERATE BOTH UTILITIES UNDER THE NAME EAST MARION SANITARY SYSTEMS, INC., REQUIRING PROOF OF OWNERSHIP OF THE LAND UPON WHICH THE FACILITIES ARE LOCATED, AND DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS to be issued in the above-referenced Docket.

(Number of Pages in Order - 8)

ALC/dr

Attachment

cc: Division of Water and Wastewater (Walker, Redemann)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of majority organizational control of East Marion Sanitary Systems, Inc. and East Marion Water Distribution, Inc. in Marion County from Del-American/First Federal of Osceola to Herbert Hein, and change in name on Certificate No. 490-W from East Marion Water Distribution, Inc. to East Marion Sanitary Systems, Inc.

DOCKET NO. 971269-WS
ORDER NO. PSC-98-0928-FOF-WS
ISSUED: July 7, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER APPROVING TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL,
APPROVING REQUEST TO OPERATE BOTH UTILITIES UNDER THE NAME
EAST MARION SANITARY SYSTEMS, INC., REQUIRING PROOF OF OWNERSHIP
OF THE LAND UPON WHICH THE FACILITIES ARE LOCATED, AND
DECLINING TO INITIATE SHOW CAUSE PROCEEDINGS

BY THE COMMISSION:

On October 2, 1997, this Commission received an application for approval of the transfer of majority organizational control of East Marion Water Distribution, Inc. and East Marion Sanitary Systems, Inc. from the First Federal Savings & Loan Association of Osceola County (First Federal) to Mr. Herbert Hein. Mr. Hein also requested to operate both utilities under the name, East Marion Sanitary Systems, Inc.

Originally, East Marion Water Distribution, Inc. and East Marion Sanitary Systems, Inc. were owned by Mr. Eric Wagner, who passed away shortly after commencing development of the subdivision

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served by the utilities. By Order No. 24553, issued May 20, 1991, in Docket No. 900603-WS, this Commission approved the transfer of the systems from Mr. Wagner's estate to Del American, Ltd. The systems were largely inactive from 1991 through 1995.

According to the application in the instant docket, the systems were acquired by First Federal through foreclosure in 1992. The systems were in foreclosure until majority organizational control was transferred to Herbert Hein on February 14, 1995, prior to Commission approval, which is an apparent violation of Section 367.071, Florida Statutes.

Show Cause

As stated previously, East Marion Sanitary Systems, Inc. and East Marion Water Distribution, Inc. are in apparent violation of Section 367.071(1), Florida Statutes, which states, in part, "No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest . . ."

At the time of certification, the systems were owned by Eric Wagner (developer). After his death, the development and utilities were sold to Del American, Ltd. First Federal foreclosed on the development and utilities in 1992. The utilities were in foreclosure until majority organizational control was transferred to Herbert Hein on February 14, 1995. At that time ownership of the land upon which the facilities are located was transferred to East Marion Sanitary System Trust and East Marion Water Distribution Trust.

Transfer of majority organization control of the utilities and ownership of the land occurred prior to Commission approval, as required by Section 367.071, Florida Statutes. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes. Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission,

having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Although the transfers occurred prior to Commission approval, we do not believe that the violation of Section 367.071, Florida Statutes, rises in these circumstances to the level of warranting initiation of show cause proceedings. Therefore, we do not find it appropriate to initiate show cause proceedings against East Marion Sanitary Systems, Inc. and East Marion Water Distribution, Inc. for failure to obtain Commission approval prior to the transfers to First Federal and Herbert Hein.

Application

The application is in compliance with Section 367.071, Florida Statutes, and other pertinent statutes and provisions of the Florida Administrative Code. In particular, the application contains a filing fee in the amount of \$1,500, as required by Rule 25-30.020, Florida Administrative Code.

Rule 25-30.037, Florida Administrative Code, requires a utility to provide proof of ownership of the land upon which its facilities are located. As proof of ownership, Mr. Hein provided warranty deeds in the name of Universal Sonlight, Inc., as trustee for East Marion Water Distribution Trust and East Marion Sanitary Systems Trust. Since the deeds are not in the name of the utility, we find it appropriate to require Mr. Hein to provide warranty deeds or other evidence in the name of the utility as proof that it owns or has continued use of the land upon which the facilities are located, within 60 days of the date this Order is issued.

Mr. Hein provided proof of compliance with the noticing provisions of Rule 25-30.030, Florida Administrative Code, including notice to the customers of the systems being transferred. The original notice stated that a transfer of organizational control of the East Marion Water Distribution, Inc. was planned, but made no reference to the transfer of East Marion Sanitary Systems, Inc. Mr. Hein was informed that it would be necessary to renote the proposed transfer. Subsequent to that time, Mr. Hein decided to discontinue use of the name, East Marion Water Distribution, Inc., and operate both systems under the name, East Marion Sanitary Systems, Inc. The proposed transfer and name

change were renoticed. No objections to the notice have been received and the time for filing such has expired.

According to the purchase agreement, Mr. Hein purchased the utilities' common stock and some development property from First Federal in 1995 for a lump-sum cash payment. The system will be operated by the same individuals who have managed the system since 1992. Mr. Len Tabor, a certified operator, provides technical services for this utility. Ms. Tabor manages the utility and provides billing services.

Mr. Hein indicated that he examined the utility systems and that no operating problems or outstanding violations were found, and no major repairs or improvements were needed. In addition, according to the Department of Environmental Regulation, there are no outstanding notices of violation against the utility.

Based on the foregoing, we find that the transfer of majority organizational control of East Marion Water Distribution, Inc. and East Marion Sanitary Systems, Inc. from First Federal to Mr. Herbert Hein is in the public interest and it is approved. In addition, Mr. Hein's request to operate both systems under the name, East Marion Sanitary Systems, Inc., is approved. A description of the territory East Marion Sanitary Systems, Inc. is authorized to serve is shown on Attachment A of this Order, which by reference is incorporated herein. Revised tariff sheets have been provided showing the change in ownership and the change in name.

Rate Base

The transfer of stock of East Marion Water Distribution, Inc. and East Marion Sanitary Systems, Inc. from First Federal to Herbert Hein will not affect the utility's asset and liability accounts, nor change the rate base balance. Therefore, we do not find it appropriate to establish rate base in this docket.

Rates and Charges

The utility's current rates and charges became effective on June 13, 1991, pursuant to Order No. 24553, issued in Docket No. 900603-WS. Rule 25-9.044(1), Florida Administrative Code, requires the new owner of a utility to adopt and use the rates, classification and regulations of the former owner unless authorized to change by this Commission.

Mr. Hein has not requested to change the rates and charges of the utility and we see no reason to change them at this time. East Marion Sanitary Systems, Inc. shall continue to charge the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. The utility has filed a revised tariff reflecting the change in issuing officer due to the transfer. The tariff shall be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of East Marion Water Distribution, Inc. and East Marion Sanitary Systems, Inc., 200 East Broadway, Kissimmee, Florida, 34741, from Del American, Ltd./First Federal Savings and Loan Association of Osceola County to Herbert Hein, G4225 B4 Miller Road #190, Flint, Michigan 48507, is hereby approved. First Federal Savings and Loan Association of Osceola County's address is 232 South Dillard Street, Winter Garden, Florida, 34787, Attention: James Burns. It is further

ORDERED that Herbert Hein's request to discontinue use of the name, East Marion Water Distribution, Inc., and operate the water system and wastewater system under one name, East Marion Sanitary Systems, Inc., is hereby granted. A description of the territory East Marion Sanitary Systems, Inc. is authorized to serve is shown on Attachment A of this Order. It is further

ORDERED that Herbert Hein shall provide warranty deeds or long-term leases in the name of East Marion Sanitary Systems, Inc. as proof that the utility owns or has continued use of the land upon which its facilities are located, within 60 days of the date this Order is issued. It is further

ORDERED that East Marion Sanitary Systems, Inc. shall continue to charge the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. A revised tariff has been submitted reflecting the approved rates and charges and the change in the issuing officer. The tariff shall be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. It is further

ORDERED that Docket No. 971269-WS shall remain open pending receipt of proof of ownership or continued use of the land upon which the utility's facilities are located as required by this Order. Upon receipt of the proof in the name of East Marion Sanitary Systems, Inc., this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 7th day of July, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

ALC

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 Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of

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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 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 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.

EAST MARION SANITARY SYSTEMS, INC.
Territory Description
Water and Wastewater Service Area

The following described lands located in portions of Sections 7, 8, and 17, Township 15 South, Range 24 East, Marion County, Florida:

Beginning at the Southwest corner of the Southwest 1/4 of the Northwest 1/4 of Section 8, Township 15 South, Range 24 East, Marion County, Florida, thence North 00°29'46" West along the West boundary of said Section 8 a distance of 839.97 feet to the Southwesterly right-of-way line of State Road No. 40, thence South 56°59'12" East along said Southwesterly right-of-way line 531.25 feet, thence South 33°01'47" West 89.79 feet, thence South 00°11'26" East 1385.87 feet, thence South 36°25'52" East 285.41 feet to the approximate shoreline of Lake Walenda, thence run into said Lake South 29°57'59" East 201.43 feet to a point in said Lake, said point being the Southeast corner of the West 1/2 of the Northwest 1/4 of the Southwest 1/4 of said Section 8, thence South 89°30'58" West along said South boundary 329.84 feet to a point on the aforesaid approximate shoreline of Lake Walenda, thence continue South 89°30'58" West along said South boundary 330.29 feet to the Southwest corner of said West 1/2 of the Northwest 1/4 of the Southwest 1/4, thence North 00°10'04" along the West boundary of said Section 8 a distance 1319.86 feet to the POINT OF BEGINNING.

Also: Lots 107, 108, and 109, in the Town of Walenda, situated in the Southwest 1/4 of Section 8, Township 15 South, Range 24 East, as per plat thereof recorded in Plat Book "E", page 23, Public Records of Marion County, Florida. Less and excepting therefrom that part of the East 200 feet of West 1181.38 feet of the Southwest 1/4 of said Section 8, Township 15 South, Range 24 East, lying South of Lake Walenda, all of which lies in Lot 109.

Also: South 1/2 of Southeast 1/4 of Section 7, Township 15 South, Range 24 East, except the West 70 acres, thereof.

Also: That part of the West 3/4 of the Northwest 1/4 of Section 17, Township 15 South, Range 24 East, lying North of Fort Gates Road, except additional road right-of-way conveyed in Official Records Book 991, page 173.