

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of water facilities to Okeechobee Utility Authority, and cancellation of Certificate No. 629-W, by Blue Heron Golf & Country Club. | DOCKET NO. 080132-WU
ORDER NO. PSC-08-0492-FOF-WU
ISSUED: August 5, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER APPROVING APPLICATION FOR TRANSFER,
CANCELLING CERTIFICATE NO. 629-W
AND
DECLINING TO IMPOSE ANNUAL REPORT PENALTY

BY THE COMMISSION:

BACKGROUND

Blue Heron Golf & Country Club (Blue Heron or utility) is a Class C utility which provides potable water service to approximately 964 equivalent residential connections in Okeechobee County. The utility is located in a portion of the South Florida Water Management District which is considered a critical water supply problem area. The utility's 2007 annual report indicates gross revenues of \$47,150 and a net operating loss of \$11,577.

Blue Heron was granted water Certificate No. 629-W effective May 13, 2004.¹ There have been no further certification actions. On March 4, 2008, an application was submitted by Okeechobee Utility Authority (OUA) for the transfer of Blue Heron's water facilities to OUA and for the cancellation of Certificate No. 629-W. On April 30, 2008, Blue Heron filed a request for a waiver of the \$489 penalty owed for the late-filed 2006 annual report. We have jurisdiction pursuant to Sections 367.071 and 367.121, Florida Statutes (F.S.).

DECLINING TO IMPOSE ANNUAL REPORT PENALTY

On April 30, 2008, the co-owner of Blue Heron, Donald E. McBrayer, filed a request for a waiver of the \$489 penalty owed for late-filing the utility's 2006 annual report. In this request, Mr. McBrayer explained that his partner and co-owner, Marty Stevens, had a liver transplant on November 27, 2007. Mr. McBrayer further asserted that he was involved in trips to visit Mr.

¹ Order No. PSC-06-0595-PAA-WU, issued July 7, 2006, in Docket No. 040889-WU, In Re: Application for grandfather certificate to operate water utility in Okeechobee County by Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club.

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Stevens and, therefore, he was not able to file the annual report. Mr. McBrayer explained that a waiver of the annual report fine was appropriate due to Mr. Steven's transplant and the associated care that he required. Mr. McBrayer further stated that, although Mr. Stevens has recovered, the liver transplant took a tremendous toll on Mr. Stevens in both money and time.

Rule 25-30.110(3), F.A.C., requires utilities subject to our jurisdiction as of December 31st of any year to file an annual report for that year. The annual report is due by March 31st for the preceding year ending in December 31st. During the time that the utility has been subject to our jurisdiction, it has filed all of its annual reports late and was assessed penalties pursuant to Rule 25-30.110(7)(b), F.A.C. Rule 25-30.110(7)(b), F.A.C., specifies that Class C utilities are assessed \$3 per day for every day the report is filed after the due date.

Blue Heron paid the late fee penalties for each of its reports, with the exception of its 2006 report. With respect to its 2004 annual report, Blue Heron received two filing extensions which permitted the report to be filed on August 12, 2005. The report was late-filed on November 22, 2005. A fine of \$306 was assessed, which was paid on September 11, 2006. The utility did not request an extension for filing its 2005 and 2006 annual reports. Blue Heron's 2005 annual report was late-filed on June 6, 2006. A fine of \$201 was assessed which was paid on June 7, 2006. Blue Heron's 2006 annual report was late-filed on September 10, 2007, resulting in the assessment of a fine of \$489. Two reminder notices dated May 2 and June 6, 2007, were sent to Blue Heron regarding the fine. Finally, Blue Heron received an extension to file its 2007 annual report until April 30, 2008. The report was not filed until May 16, 2008. A fine of \$48 was assessed, which was paid on May 28, 2008.

Rule 25-30.110(6)(c), F.A.C., states that a utility shall be subject to the penalties imposed by the rule unless the utility demonstrates good cause for the noncompliance. Further, we may, in our discretion, impose penalties for noncompliance that are greater or lesser than the penalties provided therein. We find that, although it was Mr. McBrayer's responsibility, as a co-owner, to conduct the utility's business matters while Mr. Stevens was ill, we nonetheless find that the standard penalty of \$489 as prescribed by Rule 25-30.110(7), F.A.C., shall not be imposed because, by virtue of Mr. Stevens' grave illness, the utility has demonstrated good cause for the noncompliance.

APPROVAL OF APPLICATION FOR TRANSFER
AND CANCELLATION OF CERTIFICATE NO. 629-W

On March 4, 2008, an application was filed for the transfer the Blue Heron water distribution facilities and customers to OUA and for the cancellation of Certificate No. 629-W. The application is in compliance with the requirements of Section 367.071(4)(a), F.S., and Rule 25-30.037(4), F.A.C. According to the application, OUA began providing water service to Blue Heron's customers on March 4, 2008. Therefore, March 4, 2008, is the effective date of the transfer.

Blue Heron and OUA entered into an agreement executed on December 11, 2007, to transfer Blue Heron's water distribution system and other assets to OUA. No purchase price was tendered for the acquisition, as the assets were donated to OUA. OUA was responsible for the design and construction of the upgrades necessary for the connection to OUA's water system. Blue Heron is responsible for the cost of the connection, which will be financed through a promissory note secured by the lands owned by Blue Heron, and for the removal of the existing water treatment facility.

Pursuant to Section 367.071(4)(a), F.S., the transfer of facilities to a governmental authority shall be approved as a matter of right. As such, no notice of the transfer is required and no filing fees apply. The application contains a statement that Blue Heron does not hold any customer deposits. In addition, the application indicated that OUA had received a copy of the utility's most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction.

In accordance with Rule 25-30.110, F.A.C., Blue Heron has filed its annual report for 2007 and prior years. The utility is not required to submit an annual report for 2008, as it will not be subject to our jurisdiction as of December 31, 2008. Pursuant to Rule 25-30.120, F.A.C., Blue Heron has paid Regulatory Assessment Fees (RAFs) for 2007 and all prior years. Blue Heron will be responsible for 2008 RAFs for the period January 1, 2008, through March 4, 2008, to be paid on or before March 31, 2009. There are no other penalties or interest owed by Blue Heron for annual reports or RAFs.

In light of the foregoing, the transfer of Blue Heron's water facilities to OUA is hereby acknowledged as a matter of right pursuant to Section 367.071(4)(a), F.S., and Certificate No. 629-W shall be cancelled effective March 4, 2008.


Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we decline to impose a penalty for late-filing of the 2006 Annual Report. It is further

ORDERED that the application for transfer of water facilities to Okeechobee Utility Authority and request for cancellation of Certificate No. 629-W by Blue Heron Golf & Country Club is hereby approved. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 5th day of August, 2008.


ANN COLE
Commission Clerk

(S E A L)

CMK

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.