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STATE OF FLORIDA



ORIGINAL

OFFICE OF THE GENERAL COUNSEL  
HAROLD A. MCLEAN  
GENERAL COUNSEL  
(850) 413-6199

# Public Service Commission

March 25, 2003

Herbert Hein  
13880 East Highway 40  
Silver Springs, FL 34488

Herbert Hein  
East Marion Sanitary Systems, Inc.  
4225-G Miller Road, #190  
Flint, MI 48507-1227

Re: Docket No. 010869-WS - Application for Staff-Assisted Rate Case in Marion County by East Marion Sanitary Systems, Inc.

Dear Mr. Hein:

Pursuant to our conversation on March 24, 2003, attached is a copy of the envelope and letter that was returned to me as "attempted delivery", but "not known". The address is the one that you confirmed as being correct.

Also, pursuant to that same conversation, it is my understanding that you need additional time to respond to my concerns about the lease, and you will draft a letter requesting this additional time. Apparently, there are no real problems with the lease, and you stated that you would address each of the concerns addressed in my February 20, 2003, letter.

Finally, in regards to Ms. Nieves complaint, I have been talking with Ellen Plendl of our consumer affairs, and she advises me that she needs your report or response on several questions by March 28, 2003 (this Friday). She states:

- (1) That you need to advise her on when service was terminated and restored to Ms. Nieves when there was a problem with the deposit and certification that she could act on the owner's behalf as a customer (to include when the deposit and certification were finally received);
- (2) That you need to report on how you are addressing or have addressed the apparent improper billing of \$10 for a leak check;
- (3) That you need to explain the events leading up to your refusal to take payment

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 MMS \_\_\_\_\_  
 SEC     
 OTH \_\_\_\_\_

DOCUMENT NUMBER - DATE

02872 MAR 26 03

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Herbert Hein  
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March 25, 2003

from Ms. Nieves which was apparently tendered to Ms. Beata Jordan. In particular, please advise as to whether Ms. Jordan called you or attempted to present the check in person; and

(4) Please explain your procedure when a check is sent by certified mail and why or why not this would be acceptable. Pursuant to your most recent telephone message, I believe you should accept certified mail that is mailed to the correct billing address.

I would really like to settle this problem between you and Ms. Nieves without having to go before the Commission. Ms. Nieves seems to believe that sending the check by regular mail is not adequate and that she will have no proof that it was mailed in a timely manner if you state that you did not receive it. I am open to suggestions, but we really do need to end what appears to be a developing "feud" between you and Ms. Nieves.

As I said, yesterday on the telephone, I have been faxed a copy of Ms. Nieves certified mail to you, which apparently contains a check for approximately \$5 more than that which you are entitled even if you are correct about the appropriateness of a late fee. I am asking that you please not attempt to disconnect Ms. Nieves prior to receiving this check. I believe that such action would just cause everyone more problems.

I just got your latest message about notice of abandoning the system. This cannot be done verbally by telephone, and must be done in conformance with Section 367.165, Florida Statutes. I have attached a copy of this section to this letter and will attempt to fax all to you.

The opinions expressed above are my own and do not bind the Commission in any future action. I do believe we need to work this problem out, and that it will only get messier if we have to go before the Commission. If you have any questions, or if I can be of any further assistance please contact me.

Sincerely,



Ralph R. Jaeger  
Senior Attorney

RRJ:jb

cc: Division of the Commission Clerk and Administrative Services  
Division of Economic Regulation (Fitch)  
Division of Consumer Affairs (Plendl)  
Ms. Tonia Nieves

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State of Florida

# Public Service Commission

2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

RECEIVED

FEB 25 2003

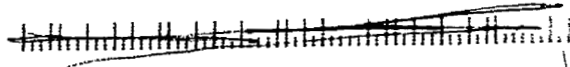
PUBLIC SERVICE COMMISSION  
THE GENERAL COUNCIL



- Not Deliverable As Addressed
- Unable To Forward
- Insufficient Address
- Moved - Left No Address
- Unpaid -  Refused
- Attempted - Not Known
- No Such Street  Number
- Vacant  Illegible
- No Mail Recipient
- Closed Office
- Return For Better Address
- Postage Due

Herbert Hein  
1980 West Highway 40  
Silver Springs, FL 34488

34488-3329 08



STATE OF FLORIDA

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(850) 413-6199

## Public Service Commission

February 14, 2003

Herbert Hein  
13880 East Highway 40  
Silver Springs, FL 34488

Herbert Hein  
East Marion Sanitary Systems, Inc.  
4225-G Miller Road, #190  
Flint, MI 48507-1227

Re: Lease Submitted in Docket No. 010869-WS - Application for Staff-Assisted Rate Case in Marion County by East Marion Sanitary Systems, Inc.

Dear Mr. Hein:

As I stated in my "fax" sent to you on February 7, 2003, a copy of the signed lease must be mailed to:

Division of the Commission Clerk and Administrative Services  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
Reference: Docket No. 010869-WS

Also, as I stated in that "fax", such a lease must be recorded pursuant to Section 695.01, Florida Statutes, and staff needs proof that the lease has been recorded.

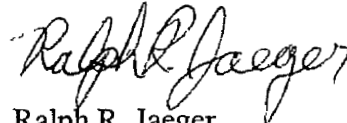
Upon review of the lease, I have several concerns and will meet with staff to discuss those concerns. However, my primary concern is with Section 32, entitled "No Construction." That Section states, "No construction shall be commenced on any portion of either parcel without the prior written consent of Lessor." This seems to contradict Section 4, which gives the Lessee the right to "alter, improve, repair, rebuild, remove, replace, construct, reconstruct, operate and maintain Systems . . . as may be necessary for efficient delivery of utility services . . . . If the Department of Environmental Protection, or some other regulatory agency (including this Commission), requires improvements or expansion and there is space on the parcels in question, does the utility first have to obtain permission of the Lessors? Please explain how the parties to the lease intend to resolve these concerns.

Herbert Hein  
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these provisions, and under what conditions would the lessors be able to block or deny such construction.

Please submit a copy of the lease, written proof of recording, and a response to the above-noted questions concerning Sections 4 and 32 by no later than March 17, 2003.

Sincerely,



Ralph R. Jaeger  
Senior Attorney

RRJ:jb

cc: Division of the Commission Clerk and Administrative Services  
Division of Economic Regulation (Moniz, Davis, Fitch, Lingo, Rendell, Willis)

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**367.165 Abandonment.**—It is the intent of the Legislature that water or wastewater service to the customers of a utility not be interrupted by the abandonment or placement into receivership of the utility. To that end:

(1) No person, lessee, trustee, or receiver owning, operating, managing, or controlling a utility shall abandon the utility without giving 60 days' notice to the county or counties in which the utility is located and to the commission. Anyone who violates the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Each day of such abandonment constitutes a separate offense. In addition, such act is a violation of this chapter, and the commission may impose upon the utility a penalty for each such offense of not more than \$5,000 or may amend, suspend, or revoke its certificate of authorization; each day of such abandonment without prior notice constitutes a separate offense.

(2) After receiving such notice, the county, or counties acting jointly if more than one county is affected, shall petition the circuit court of the judicial circuit in which such utility is domiciled to appoint a receiver, which may be the governing body of a political subdivision or any other person deemed appropriate. The receiver shall operate the utility from the date of abandonment until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service.

(3) The notification to the commission under subsection (1) is sufficient cause for revocation, suspension, or amendment of the certificate of authorization of the utility as of the date of abandonment. The receiver operating such utility shall be considered to hold a temporary authorization from the commission, and the approved rates of the utility shall be deemed to be the interim rates of the receiver until modified by the commission.

**History.**—ss. 23, 26, ch. 80-99; ss. 2, 3, ch. 81-318; s. 7, ch. 84-149; ss. 22, 26, 27, ch. 89-353; s. 51, ch. 91-224; s. 4, ch. 91-429.

**367.171 Effectiveness of this chapter.**—

(1) The provisions of this chapter shall become effective in a county of this state upon the adoption of a resolution by the board of county commissioners of such county, or, in counties operating under a countywide charter, by the appropriate board, declaring that such county is subject to the provisions of this chapter. Any board of county commissioners which adopts such a resolution shall immediately notify the commission of its adoption and submit the resolution to the commission. A county, after 10 continuous years under the jurisdiction of the commission, may by resolution or ordinance rescind any prior resolution or ordinance imposing commission jurisdiction and thereby exclude itself from the provisions of this chapter, except that the county may not exclude itself from the provisions of this section.

(2)(a) Within 30 days after this chapter becomes applicable to a county, each utility shall register by filing with the commission a written statement setting forth the full legal name of the utility, its mailing address, and a brief description of its service area.

(b) On the day this chapter becomes applicable to any county, any utility engaged in the operation or construction of a system shall be entitled to receive a certificate for the area served by such utility on the day this chapter becomes applicable to it. Within 90 days after the day this chapter becomes applicable to it, the utility shall make application for a certificate by filing with the commission:

1. A map of its existing system or system under construction;
2. A description of the area served by the system; and
3. A tariff listing all rates and charges and such other financial information as may be required