

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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-M-E-M-O-R-A-N-D-U-M-

DATE: October 7, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Brady, Kaproth) *KK pb pd*
Office of the General Counsel (Jaeger) *WJ*

RE: Docket No. 041116-WS – Resolution of Board of County Commissioners of Bay County rescinding resolution of July 10, 1973 which imposed regulatory jurisdiction upon the Florida Public Service Commission for utilities operating within Bay County.
County: Bay

AGENDA: 10/19/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\041116.RCM.DOC

Case Background

On July 10, 1973, the Board of County Commissioners of Bay County (County Board) adopted a resolution declaring Bay County subject to the provisions of Chapter 367, Florida Statutes. This resolution invoked Commission jurisdiction over investor-owned water and wastewater utilities in Bay County. The Commission acknowledged the resolution by Order No. 5802, issued July 19, 1973, in Docket No. 5818-WS, In re: Jurisdictional Resolutions from Boards of County Commissioners adopting the Water and Sewer System Regulatory Law, Chapter 71-278, Laws of Florida (Chapter 367, Florida Statutes).

On September 7, 2004, the County Board adopted Resolution No. 2570, rescinding the Commission's jurisdiction over investor-owned water and wastewater utilities in Bay County effective immediately. An application for acknowledgement of the resolution was filed on September 23, 2004. The Commission has jurisdiction pursuant to Section 367.171, Florida Statutes.

DOCUMENT NUMBER-DATE

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Discussion of Issues

Issue 1: Should the Commission acknowledge Resolution No. 2570, rescinding the Commission's jurisdiction over investor-owned water and wastewater utilities in Bay County effective September 7, 2004?

Recommendation: Yes. Certificate Nos. 446-S and 514-W, held by Sandy Creek Utility Services, Inc. should be cancelled effective September 7, 2004. Certificate No. 535-S, held by Crooked Creek Utility Company, should be cancelled upon the conclusion of Docket No. 040358-SU. Certificate Nos. 358-S and 469-W, held by Bayside Utility Services, Inc., should be cancelled upon the conclusion of Docket No. 030444-WS. The cancellation of these certificates does not affect the authority of the Commission to collect, or the obligation of the utilities to pay, regulatory assessment fees accrued prior to the September 7, 2004, transfer of jurisdiction to Bay County. (Brady, Kaproth, Jaeger)

Staff Analysis: As stated in the case background, on July 10, 1973, the County Board adopted a resolution declaring the Bay County subject to the provisions of Chapter 367, Florida Statutes. This resolution invoked Commission jurisdiction over investor-owned water and wastewater utilities in Bay County. On September 7, 2004, in accordance with Section 367.171(1), Florida Statutes, the County Board adopted Resolution No. 2570, rescinding Commission jurisdiction effective immediately. An application for acknowledgement of the resolution rescinding jurisdiction was filed on September 23, 2004.

Section 367.171(1), Florida Statutes, provides that a county, after ten continuous years under Commission jurisdiction, may by resolution or ordinance rescind said jurisdiction and thereby exclude itself from the provisions of Chapter 367, Florida Statutes, except from Section 367.171, Florida Statutes. Bay County has met that requirement. Therefore, staff recommends that the Commission acknowledge Resolution 2570, which rescinds Commission jurisdiction in Bay County, effective September 7, 2004.

The following three utilities currently hold certificates of authorization from the Commission to provide water and wastewater service in Bay County:

<u>Utility</u>	<u>Certificate Number(s)</u>	
Bayside Utility Services, Inc. (Bayside)	358-S	469-W
Crooked Creek Utility Company (Crooked Creek)	535-S	
Sandy Creek Utility Services, Inc. (Sandy Creek)	446-S	514-W

Pursuant to Section 367.171(5), Florida Statutes, when a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the Commission shall remain within the jurisdiction of the Commission until disposed of in accordance with the law in effect on the day such case was filed. At the time of the County Board's resolution, both Bayside and Sandy Creek were parties to Docket No. 040316-WS, In re: Analysis of Utilities, Inc.'s plan to bring all of its Florida subsidiaries into compliance with Rule

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25-30.115, Florida Administrative Code. However, since that docket addresses future compliance with Commission rules, both utilities were considered withdrawn from that docket effective September 7, 2004. Bayside is also party to Docket No. 030444-WS, In re: Application for rate increase in Bay County by Bayside Utility Services, Inc. Crooked Creek is party to Docket No. 040358-SU, In re: Application for certificate to provide wastewater service in Bay County by Crooked Creek Utility Company. Since the matters in these dockets remain within the jurisdiction of the Commission, the certificates should remain active until the dockets are concluded.

Bayside's and Sandy Creek's Regulatory Assessment Fees (RAFs) were paid for the period of January 1, 2004 through June 30, 2004. Bayside and Sandy Creek are also responsible for an additional RAF payment for the period of July 1, 2004 through September 7, 2004. Bay County is not responsible for these additional RAF payments.

Crooked Creek's application to provide wastewater service was approved by the Commission on September 4, 2004, and the order is to be issued by October 11, 2004. Since construction has not yet begun, the utility has not yet collected any revenues. Therefore, pursuant to Rule 25-30.120(1), Florida Administrative Code, a minimum annual RAF payment of \$25 should be imposed.

The cancellation of these certificates does not affect the authority of the Commission to collect, or the obligation of the utilities to pay, RAFs accrued prior to the September 7, 2004, transfer of jurisdiction to Bay County. See Section 367.145(1)(a), Florida Statutes, and Rule 25-30.120(2), Florida Administrative Code.

Staff recommends that Certificate Nos. 446-S and 514-W, held by Sandy Creek be cancelled effective September 7, 2004; Certificate Nos. 358-S and 469-W, held by Bayside, be cancelled upon the conclusion of Docket No. 030444-WS; and Certificate No. 535-S, held by Crooked Creek, be cancelled upon the conclusion of Docket No. 040358-SU. The cancellation of these certificates does not affect the authority of the Commission to collect, or the obligation of the utilities to pay, regulatory assessment fees accrued prior to the September 7, 2004, transfer of jurisdiction to Bay County. See Section 367.145(1)(a), Florida Statutes, and Rule 25-30.120(2), Florida Administrative Code.

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Issue 2: Should this docket be closed?

Recommendation: No. The docket should remain open until Docket Nos. 030444-WS and 040358-SU have been closed, after which time this docket should be closed administratively and Bayside's Certificate Nos. 358-S and 469-W and Crooked Creek's Certificate No. 535-S should be cancelled. (Jaeger)

Staff Analysis: The docket should remain open until Docket Nos. 030444-WS and 040358-SU have been closed, after which time this docket should be closed administratively and Bayside's Certificate Nos. 358-S and 469-W and Crooked Creek's Certificate No. 535-S should be cancelled.