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

DATE: February 19, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Clapp, Kaproth)
Office of the General Counsel (Williams) *PD KK CAP JS*

RE: Docket No. 080698-WS – Application for transfer of water and wastewater facilities to Martin County, and cancellation of Certificate Nos. 362-W and 317-S, by Laniger Enterprises of America, Inc.
County: Martin *AW JSB*

AGENDA: 03/03/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\080698.RCM.DOC

Case Background

Laniger Enterprises of America, Inc. (Laniger, seller, or utility) is a Class C utility providing water and wastewater service to approximately 273 water and 318 wastewater equivalent residential connections (ERC) in Martin County. The utility's 2007 annual report indicates that the utility had gross water revenue of \$153,103 and net operating income of \$16,366 and gross wastewater revenue of \$138,136 and net operating loss of \$618.

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The utility's water and wastewater systems were originally issued Certificate Nos. 362-W and 317-S in 1982.¹ The utility was transferred twice.²

On December 5, 2008, Laniger submitted an application for transfer of utility assets to Martin County (the County or buyer) and cancellation of Certificate Nos. 362-W and 317-S. The Commission has jurisdiction pursuant to Section 367.071, Florida Statutes (F.S.).

¹ Order No. 11423, issued December 15, 1982, in Docket Nos. 810008-WS, In re: Application of Environmental Concern, Ltd., for a Certificate to operate a water and sewer company and to increase its rates to water and sewer customers in Martin County, Florida.

² Order No. 12187, issued July 1, 1983, in Docket No. 820211-WS, In re: Application for transfer of Certificates Nos. 362-W and 317-S from Environmental Concern, Ltd., to Beacon 21 Development Corporation and Order No. 22203, issued November 21, 1989, in Docket No. 881500-WS, In re: Application for transfer of Certificates Nos. 362-W and 317-S from Beacon Twenty-one Development Corporation to Laniger Enterprises of America, Inc. in Martin County.

Discussion of Issues

Issue 1: Should the transfer of Laniger Enterprises of America, Inc. water and wastewater facilities to Martin County and the cancellation of Certificate Nos. 362-W and 317-S be acknowledged?

Recommendation: Yes. The transfer of Laniger Enterprises of America, Inc. water and wastewater facilities to Martin County should be acknowledged as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate Nos. 362-W and 317-S should be cancelled effective December 16, 2008. Laniger should pay its 2008 regulatory assessment fees on or before March 31, 2009. (Clapp, Kaproth, Williams)

Staff Analysis: On December 5, 2008, Laniger filed an application to transfer the utility's service territory and facilities to the County pursuant to Section 367.071(4)(a), F.S., and Rule 25-30.037(4), Florida Administrative Code (F.A.C.) and to cancel Certificate Nos. 362-W and 317-S. According to documents filed on December 5, 2008, the actual closing of the transfer was scheduled for and took place on December 16, 2008. Therefore, December 16, 2008, is the effective date of the transfer.

The County and Laniger agreed to the transfer of the water and wastewater facilities. Pursuant to Section 367.071(4), 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 the utility holds no customer deposits. Therefore, no deposits or accumulated interest will be transferred to the County or applied to the customer accounts. The application also stated that the buyer obtained 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., Laniger filed its annual reports for 2007 and prior years. Laniger is not required to file an annual report for 2008 because of its transfer to the County prior to the end of 2008. Pursuant to Rule 25-30.120, F.A.C., the utility's regulatory assessment fees (RAFs) for 2007 and all prior years have been paid. The RAFs Laniger owes for 2008 are due on or before March 31, 2009. In addition, Rule 25-30.037(7), F.A.C., states that, "Amendment or cancellation of the certificate shall not affect the utility's obligation pursuant to Rule 25-30.120, F.A.C., Regulatory Assessment Fees." In December, staff talked with the seller regarding payment of the RAFs due.

Based on the above, staff recommends that the transfer of Laniger Enterprises of America, Inc. water and wastewater facilities to Martin County should be acknowledged as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate Nos. 362-W and 317-S should be cancelled effective December 16, 2008. Laniger should pay its 2008 regulatory assessment fees on or before March 31, 2009.

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Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed because no further action is necessary.
(Williams)

Staff Analysis: This docket should be closed because no further action is necessary.