



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: December 19, 2011

TO: Jennifer S. Crawford, Office of the General Counsel

FROM: Martha A. Golden, Division of Economic Regulation *md pd*
Kathleen L. Kaproth, Division of Economic Regulation *KK JS*

RE: Administrative approval of a transfer to a governmental entity in Docket No. 110076-WS, Notice of abandonment of water and wastewater systems in St. Johns County by Orangedale Utilities, Inc.

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COMMISSION
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Orangedale Utilities, Inc. (Orangedale or Utility) is a Class C water and wastewater utility providing service in St. Johns County. The Utility has been in existence since 1958, and currently serves approximately 88 residential customers in the Bartram Oaks subdivision located in the Orangedale community near St. Augustine. The Utility is located in the St. Johns River Water Management District. Orangedale's 2010 Annual Report indicates that the Utility had gross operating revenues of \$48,856 and a net operating loss of \$6,828.

On December 2, 2008, the St. Johns County Board of County Commissioners (SJCBC or Board) passed Ordinance No. 2008-57, transferring jurisdiction of the privately-owned water and wastewater utilities in St. Johns County to the Florida Public Service Commission (PSC or Commission).¹ Orangedale subsequently applied for and was granted grandfather Certificate Nos. 651-W and 557-S in 2010.²

In accordance with Section 367.165, Florida Statutes (F.S.), on March 12, 2011, Orangedale gave the County and this Commission 60 days' notice of the owner's intent to abandon the water and wastewater facilities as of May 11, 2011. The Utility has complied with the provisions of Section 367.165, F.S., and Rule 25-30.090, Florida Administrative Code (F.A.C.) regarding abandonment of a utility. The notice indicates that the water and wastewater systems are operating under permits issued by the Florida Department of Environmental Protection and have no outstanding violations. The Utility's notice of abandonment cited financial losses as the driving factor leading to the abandonment.

Section 367.165(2), F.S., requires the County to petition the circuit court for the appointment of a receiver. Such receiver can be the County or any other person or entity such as a homeowners association. The responsibility of the receiver is to operate the utility efficiently and effectively from the date of abandonment until disposition of the property. By Order dated

¹ Order No. PSC-09-0092-FOF-WS, issued February 12, 2009, in Docket No. 090029-WS, In re: Ordinance by Board of County Commissioners of St. Johns County relating to regulation of water and wastewater utilities within the unincorporated areas of St. Johns County.

² Order No. PSC-10-0403-FOF-WS, issued June 21, 2010, in Docket No. 090468-WS, In re: Application for grandfather certificate to operate water and wastewater utility in St. Johns County by Orangedale Utilities, Inc.

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FPSC-COMMISSION CLERK

May 3, 2011, the Circuit Court acknowledged St. Johns County's petition to appoint a receiver, and appointed the County as receiver of the Utility in Case No. CA11-0673 by the Circuit Court of the Seventh Judicial Circuit in and for St. Johns County, Florida.³ By mutual agreement between the County and Utility, the County assumed operation of the water and wastewater systems on May 11, 2011. Pursuant to Rule 25-30.090(3), F.A.C., within 10 days of the appointment of the receiver by the Circuit Court, the receiver shall request from the Commission a copy of the Utility's tariff and most recent annual report. A copy of the Utility's tariff and annual report have been sent to the County.

The Circuit Court's order specified that all ownership interests in the Utility's water and wastewater systems would be transferred to the County if the assets were not sold or otherwise disposed of by the receiver within 90 days. On June 21, 2011, the SJCBC voted to accept ownership of the Utility and incorporate it into the County's main utility system upon completion of the receivership period. By letter dated August 5, 2011, the SJCBC advised the PSC of the Board's action to accept ownership of the Utility's facilities and requested that the PSC expressly release Orangedale from PSC jurisdiction. Pursuant to Section 367.022(2), F.S., utility systems owned, operated, managed, or controlled by governmental authorities are exempt from Commission regulation. Further, the County's request is in compliance with Section 367.071(4)(a), F.S., which specifies that the sale of facilities to a governmental authority shall be approved as a matter of right.

It should be noted that cancellation of the Utility's certificate does not relieve the Utility's obligation regarding outstanding regulatory assessment fees (RAFs) for 2010 and RAFs accrued through appointment of the receiver on May 3, 2011. Orangedale requested and was granted an extension from March until May 2011 for filing its 2010 RAF Report. The Utility filed its 2010 RAF Report in May 2011, but did not submit the total amount of RAFs due. The Utility's owner stated financial hardship as the reason for not submitting payment in full, and requested approval of a payment plan to pay the outstanding balance in installments. To date the Utility has paid a total of \$717.34 for water and wastewater combined. With extension fees of \$32.98 added to the outstanding combined balance of \$1,481.18, the total balance due is \$1,514.16. The Utility indicated it will make five additional installment payments to pay off this balance. The amount accrued from January 1, 2011 through May 3, 2011 is not due until March 31, 2012.

The Commission has jurisdiction pursuant to Sections 367.071 and 367.165, F.S. Also, pursuant to Section 2.07(C)(4)(d) of the Administrative Procedures Manual, staff has been given administrative authority to approve transfers to governmental entities that are in compliance with Section 367.071(4)(a), F.S. and are not controversial in nature. Based on all the above, staff recommends that the Commission acknowledge the Utility's notice of abandonment pursuant to Section 367.165, F.S., acknowledge appointment of St. Johns County as the receiver for the Utility, acknowledge transfer of the water and wastewater systems to St. Johns County pursuant to Section 367.071, F.S., and cancel Certificate Nos. 651-W and 557-S effective May 3, 2011. In addition, staff recommends that the docket should be closed because no further action is necessary.

³ Order Appointing Receiver, Case No. CA11-0673, In re: St. Johns County, Florida, a political subdivision of the State of Florida vs. Orangedale Utilities, Inc., a Florida corporation, the Vineyard MHP Utilities Facilities, and Jon B. Stump (Fla.7th Cir. Ct. May 3, 2011)