

State of Florida



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: February 26, 2015

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

FROM: Kelley F. Corbari, Senior Attorney, Office of the General Counsel: RAS Section *KFC*

RE: **Docket No. 150000-OT** – East Marion Sanitary Systems, Inc. – Apparent violations of Sections 367.0816, 367.081 and 367.091, Florida Statutes, and Rule 25-30.350, Florida Administrative Code, and Possible implementation of show cause proceedings against East Marion Sanitary Systems, Inc. pursuant to Sections 350.127 and 367.161, Florida Statutes.

Docket No. 010869-WS – Application for staff-assisted rate case in Marion County by East Marion Sanitary Systems, Inc.

Attached please find staff's correspondence to East Marion Sanitary Systems, Inc. regarding its over-collection of rate case expenses and possible initiation of show cause proceeding. Please file the document in the above docket files and reference Docket No. 010869-WS with the filing.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

KFC

COMMISSIONERS:
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LISA POLAK EDGAR
RONALD A. BRISÉ
JULIE I. BROWN
JIMMY PATRONIS

STATE OF FLORIDA



GENERAL COUNSEL
CHARLIE BECK
(850) 413-6199

Public Service Commission

February 26, 2015

VIA CERTIFIED & REGULAR MAIL

Mr. Herbert Hein, President/Owner
EAST MARION SANITARY SYSTEMS, INC.
4225 Miller Road, #190
Flint, MI 48507

Mr. Mike Smallridge, Operator
EAST MARION SANITARY SYSTEMS, INC.
3336 Grand Blvd., Suite 102
Holiday, FL 34690

RE: Apparent violations of Sections 367.0816, 367.081 and 367.091, Florida Statutes, and Rule 25-30.350, Florida Administrative Code, and Possible implementation of show cause proceedings against East Marion Sanitary Systems, Inc. pursuant to Sections 350.127 and 367.161, Florida Statutes.

Dear Mr. Hein and Mr. Smallridge:

Pursuant to Commission Order No. PSC-02-1168-PAA-WS¹ in Docket No. 010869-WS, East Marion was permitted to recover its rate case expenses over a four year period. The recovery period ended on September 4, 2006.² The Order specified that revised tariff sheets reflecting the elimination of this expense were to be filed with the Commission no later than one month prior to this date.³ Schedule Nos. 4 and 4A of the Order set out the amounts by which the utility's rates were to be reduced.⁴ While the rate reduction was recently implemented along with East Marion's 2014 index filing that became effective August 29, 2014, the delay in implementing the reduction resulted in East Marion over-collecting rate case expenses between September 2006 to September 2014.

¹ See, Order No. PSC-02-1168-PAA-WS, issued August 26, 2002, finalized by Order No. PSC-02-1273-CO-WS, issued September 18, 2002, in Docket No. 010869-WS, In Re: Application for staff-assisted rate case in Marion County by East Marion Sanitary Systems, Inc.

<http://www.floridapsc.com/library/filings/02/08991-02/08991-02.PDF>

² Id. at p. 55.

³ Id.

⁴ Id. at p. 74-75.

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Internet E-mail: KCorbari@psc.state.fl.us

Pursuant to Sections 367.081 and 367.091, Florida Statutes (F.S.), a utility may only impose and collect rates and charges that have been approved by the Commission. In addition, Section 367.0816, F.S., provides that the amount of rate case expenses approved by the Commission shall be recovered in a utility's rates over a four-year period, at the end of which the utility shall immediately reduce its rates by the amount of rate case expense previously included in its rates. Finally, pursuant to Rule 25-30.350, Florida Administrative Code (F.A.C.), a utility must refund customers any amounts over-collected based on the actual amounts the utility's customers were billed during the period of overbilling, and customers may elect to receive the refund in a one-time disbursement, if the refund is in excess of \$20, or as a credit to future billings.

A review of the operations of East Marion Sanitary Systems, Inc. (East Marion) shows that the Utility may be violating one or more of the above-noted statutes and related rules. Section 350.127 and 367.161, F.S., authorize the Commission to take enforcement action, including assessing and collecting penalties for apparent violations of Commission statutes, rules and orders. Section 367.161, F.S., provides in pertinent part:

- (1) If any utility, by any authorized officer, agent, or employee, knowingly refuses to comply with, or willfully violates, any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty for each such offense of not more than \$5,000, to be fixed, imposed, and collected by the commission. . . . Each day that such refusal or violation continues constitutes a separate offense. . . .
- (2) The commission has the power to impose upon any entity that is subject to its jurisdiction under this chapter and that is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$5,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. . . .

Commission staff notified East Marion of its over-collection of rate case expenses several times and provided the Utility with a schedule approximating the amount of the over-collection and the Commission's Order.⁵ In addition, staff permitted East Marion an opportunity to prepare a detailed schedule showing the amounts billed to each customer along with the excess rate case expense collected from each customer during the period September 2006 through September 2014. To date, East Marion has not responded to staff's notices regarding the over-collection issue and not submitted its plan to refund the overbilled amount to its customers.

⁵ See, Staff correspondence to East Marion regarding its over-collection of rate case expenses:

- Letter from Division of Economics Director, dated December 15, 2014, re: over-collection of rate case expenses and demand for scheduled and description of a refund plan by January 30, 2015, which was returned on December 22, 2014, by the U.S. Postal Service.
- Letter from Division of Economics Director, dated December 30, 2014, re: over-collection of rate case expenses and demand for scheduled and description of a refund plan by January 30, 2015.
- Letter from Division of Economics Director, dated January 7, 2015, re: over-collection of rate case expenses and demand for scheduled and description of a refund plan by January 30, 2015.

In addition to the rate case expense overbilling issue, a recent review of the Florida Secretary of State Corporation database shows that East Marion does not have a current Florida Corporate Registration.⁶ In fact, East Marion's corporate status has been "inactive," since September 27, 2013.⁷ Utilities subject to Commission regulation are required to maintain current contact information with the Office of Commission Clerk, current tariffs, and continued compliance with applicable business formation and registration provisions of law. In failing to maintain its corporate status, East Marion is not in compliance with the Florida Secretary of State Corporation rules and Commission requirements.

Conclusion

If East Marion does not immediately correct the above-noted violations by **March 16, 2015**, Commission staff will open a docket and initiate show cause proceedings against the Utility, and present a recommendation to the Commission on these matters at the Commission Conference Agenda on **April 16, 2015**. If East Marion is ultimately found to be in violation of Commission statutes, rules, and/or Orders, the Commission may impose fines of up to \$5,000 for each day the violation continues, impose a statutory lien upon the real and personal property of the Utility, or revoke the Utility's certificate, pursuant to Section 367.161, F.S.

Please note that any enforcement proceedings opened by the Commission against East Marion will only further complicate the management and potential transfer or sale of this Utility. Therefore, your prompt attention to this matter is required.

Should you have additional questions or comments, please do not hesitate to contact me at (850) 413-6234 or KCorbari@psc.state.fl.us.

Sincerely,



Kelley F. Corbari,
Senior Attorney

KFC/dl
Enclosures

cc: Office of Public Counsel (J.R. Kelly/Stephen C. Reilly)
Deputy Executive Director, Technical (Harvey)
Division of Economics (Ortega, Thompson Daniel, Dean)
Office of the General Counsel (Corbari, Teitzman, Helton)
Office of Commission Clerk

⁶ See, Copy of East Marion Sanitary Systems, Inc.'s Expired Corporate Registration, as of February 26, 2015.
<http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquiryType=EntityName&directionType=Initial&searchNameOrder=EASTMARIONSANITARYSYSTEMS%20J221310&aggregateId=domp-j22131-bc75f1d1-9b5f-4e77-b5f5-9e99afa8e28d&searchTerm=east%20marion%20sanitary%20systems&listNameOrder=EASTMARIONSANITARYSYSTEMS%20J221310>

⁷ Id.

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JULIE I. BROWN

STATE OF FLORIDA



DIVISION OF ECONOMICS
JAMES W. DEAN
DIRECTOR
(850) 413-6410

Public Service Commission

December 15, 2014

Mr. Herbert Hein
East Marion Sanitary Systems, Inc.
1300 East Highway 40
Silver Springs, FL 34488

Re: Docket No. 010869-WS - Application for increase in water and wastewater rates in Marion County by East Marion Sanitary Systems, Inc.

Dear Mr. Hein:

In your last rate case, Docket No. 010869-WS, the Commission's Order No. PSC-02-1168-PAA-WS allowed you to recover your rate case expense over four years. The recovery period ended on September 4, 2006. The order specified that revised tariff sheets reflecting the elimination of this expense were to be filed with the Commission no later than one month prior to this date. Schedule Nos. 4 and 4A of the Order show the amounts by which the utility's rates were to be reduced. While the rate reduction was recently implemented along with the Utility's 2014 index filing that became effective August 29, 2014, the delay in implementing the reduction resulted in the utility over collecting rate case expense from September 2006 through September 2014.

Pursuant to Rule 25-30.350, Florida Administrative Code, customers must be refunded the amount overbilled based on the actual amounts they were billed during the period of over collection. Customers may elect to receive the refund in a one-time disbursement, if the refund is in excess of \$20, or as a credit to future billings.

Staff has prepared and attached a schedule that we believe approximates the amount of the over collection. If you disagree with this estimate, you may prepare a detailed schedule showing the amounts billed to each customer and the excess rate case expense collected from each customer from September 2006 through September 2014. The excess amount collected should be based on the monthly rate reductions to the base facility and gallonage charges collected during that period, as shown on Schedule Nos. 4 and 4A of the Order, for both water and wastewater. A copy of the Order is attached for your convenience. Please provide the requested schedule and a description of how and

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Mr. Hein
Page 2
December 15, 2014

over what time period the refund or credit will be given to customers by January 30, 2015 to the following address:

Director, Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

All correspondence should refer to "Docket No. 1010869-WS, East Marion Sanitary Systems, Inc." Please submit this report for staff's review prior to making any customer refunds. If you have any questions, please contact Kelly Thompson at (850) 413-6986.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Dean", with a long horizontal flourish extending to the right.

James W. Dean
Director

JD/kt
Attachment

Calculation of Refund*							
Year	Water				Wastewater		
	Customers	Gallons	Revenue	EST FYR	Customers	Revenue	EST FYR
2007	96	6,445	\$25,372	\$457	90	\$38,991	\$546
2008	89	5,363	\$22,174	\$399	83	\$34,651	\$485
2009	95	4,585	\$19,986	\$360	87	\$32,829	\$460
2010	100	4,764	\$23,290	\$419	89	\$33,008	\$462
2011	99	5,164	\$24,700	\$445	91	\$34,833	\$488
2012	103	5,559	\$25,375	\$457	92	\$35,785	\$501
2013	103	5,793	\$24,346	\$438	92	\$35,018	\$490
2014**	103	5,793	\$24,346	\$438	92	\$35,018	\$490
TOTAL				\$2,974	TOTAL		\$3,431

* All data taken from filed annual reports and Order No. PSC-02-1168-PAA-WS

** 2014 information estimated based on 2013 data.

Mr. Herbert Hein
East Marion Sanitary Systems, Inc.
1300 East Highway 40

NIXIE 344883120-1N 12/22/14

RETURN TO SENDER
NO SUCH NUMBER
UNABLE TO FORWARD
RETURN TO SENDER



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JULIE I. BROWN

STATE OF FLORIDA



DIVISION OF ECONOMICS
JAMES W. DEAN
DIRECTOR
(850) 413-6410

Public Service Commission

December 30, 2014

Mr. Herbert Hein
East Marion Sanitary Systems, Inc.
3336 Grand Blvd., Suite 102
Holiday, FL 34690

Re: Docket No. 010869-WS - Application for increase in water and wastewater rates in Marion County by East Marion Sanitary Systems, Inc.

Dear Mr. Hein:

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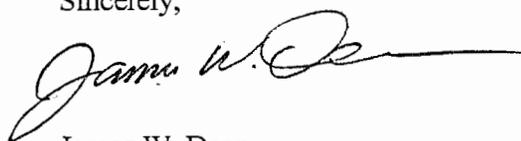
Mr. Hein
Page 2
December 30, 2014

over what time period the refund or credit will be given to customers by January 30, 2015 to the following address:

Director, Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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JIMMY PATRONIS

STATE OF FLORIDA



DIVISION OF ECONOMICS
JAMES W. DEAN
DIRECTOR
(850) 413-6410

Public Service Commission

January 7, 2015

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

Re: Docket No. 010869-WS - Application for increase in water and wastewater rates in Marion County by East Marion Sanitary Systems, Inc.

Dear Mr. Hein:

In your last rate case, Docket No. 010869-WS, the Commission's Order No. PSC-02-1168-PAA-WS allowed you to recover your rate case expense over four years. The recovery period ended on September 4, 2006. The order specified that revised tariff sheets reflecting the elimination of this expense were to be filed with the Commission no later than one month prior to this date. Schedule Nos. 4 and 4A of the Order show the amounts by which the utility's rates were to be reduced. While the rate reduction was recently implemented along with the Utility's 2014 index filing that became effective August 29, 2014, the delay in implementing the reduction resulted in the utility over collecting rate case expense from September 2006 through September 2014.

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Mr. Hein

Page 2

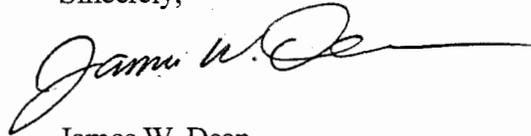
January 7, 2015

over what time period the refund or credit will be given to customers by January 30, 2015 to the following address:

Director, Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

All correspondence should refer to "Docket No. 1010869-WS, East Marion Sanitary Systems, Inc." Please submit this report for staff's review prior to making any customer refunds. If you have any questions, please contact Kelly Thompson at (850) 413-6986.

Sincerely,

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James W. Dean
Director

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TOTAL				\$2,974	TOTAL		\$3,431

* All data taken from filed annual reports and Order No. PSC-02-1168-PAA-WS

** 2014 information estimated based on 2013 data.

FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS**Detail by Entity Name****Florida Profit Corporation**

EAST MARION SANITARY SYSTEMS, INC.

Filing Information

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Date Filed	06/27/1986
State	FL
Status	INACTIVE
Last Event	ADMIN DISSOLUTION FOR ANNUAL REPORT
Event Date Filed	09/27/2013
Event Effective Date	NONE

Principal Address13000 E. HWY 40
SILVER SPRINGS, FL 34488

Changed: 07/10/1996

Mailing Address4225 MILLER RD #190
FLINT, MI 48507

Changed: 04/23/2009

Registered Agent Name & AddressCARACCI, ANTHONY
770 NE 130TH TERRACE
SILVER SPRINGS, FL 34488

Name Changed: 05/16/2002

Address Changed: 05/16/2002

Officer/Director Detail**Name & Address**

Title P

HEIN, HERBERT
4225 MILLER RD #190
FLINT, MI 48507

Title VPST

CONGDON, DONNA
4225 MILLER RD #190
FLINT, MI 48507

Annual Reports

Report Year	Filed Date
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2011	03/01/2011
2012	05/01/2012

Document Images

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