

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: July 22, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Watts, Ramos) *TB*
Division of Economics (Kunkler) *JGH*
Office of the General Counsel (Trierweiler) *JSC*

RE: Docket No. 20200210-SU – Notice of abandonment of wastewater system in Polk County, by Crooked Lake Park Sewerage Company, effective March 25, 2021.

AGENDA: 08/03/21 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Crooked Lake Park Sewerage Company (Crooked Lake or Utility) is a Class C wastewater utility providing service in Polk County. The Utility was issued grandfather Certificate No. 517-S on September 21, 1998,¹ and currently serves approximately 324 wastewater customers. Crooked Lake's 2019 Annual Report indicates that the Utility had gross operating revenues of \$227,281 and a net operating loss of \$149,659.

On July 2, 2020, Crooked Lake filed an application for an amendment to delete territory.² In its application for amendment, the Utility stated that the reason it wished to delete territory was to

¹Order No. PSC-98-1247-FOF-SU, issued September 21, 1998, in Docket No. 961478-SU, *In re: Application for grandfather certificate to operate a wastewater utility in Polk County by Crooked Lake Park Sewerage Company.*

²Docket No. 20200177-SU, *In re: Application for amendment of Cert 517-S to delete territory in Polk County, by Crooked Lake Park Sewerage Company.*

delete the College Park Mobile Home Park (CPMHP), a bulk customer, from its territory to reduce flow to its wastewater treatment plant (WWTP). Crooked Lake's WWTP had been having compliance issues with the Department of Environmental Protection (DEP), and it believed eliminating the CPMHP as a customer would allow it to correct its compliance issues with the DEP.

On July 10, 2020, the Office of Public Counsel (OPC) filed a notice of intervention in the docket. On July 14, 2020, OPC issued its first set of interrogatories and first request for production of documents to Crooked Lake.

On September 3, 2020, staff notified the Utility that its application was deficient, with corrections to be submitted to the Commission no later than October 5, 2020. On September 4, 2020, Crooked Lake's attorney notified the Commission that Crooked Lake wished to withdraw its application for amendment and advised that the Utility intended to file for an abandonment of the Utility.

On September 4, 2020, Crooked Lake filed its notice of abandonment with the Commission and with the Polk County manager, with an effective date of November 8, 2020. On October 27, 2020, the Utility filed a notice of its intent to delay the abandonment proceedings for 90 days pending its attempts to sell the Utility. At a January 21, 2021 status hearing before the Circuit Court for the Tenth Judicial Circuit, the Utility advised that the sale would not proceed, and asked that the court restart the abandonment proceedings. By order dated March 25, 2021, the court appointed Polk County as receiver for the abandoned Utility.

The purpose of this recommendation is to acknowledge the abandonment of the utility system by Crooked Lake and the appointment of Polk County (County) as the receiver, and to cancel Certificate No. 517-S. The Commission has jurisdiction pursuant to Sections 367.022 and 367.165, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission acknowledge the abandonment of the utility system by Crooked Lake Park Sewerage Company and the appointment of Polk County as receiver, and cancel Certificate No. 517-S?

Recommendation: Yes. The Commission should acknowledge the abandonment of Crooked Lake pursuant to Section 367.165, F.S., and appointment of Polk County as the receiver for the Utility. Certificate No. 517-S should be cancelled effective March 25, 2021. (M. Watts, Kunkler)

Staff Analysis: When a utility is abandoned, 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 approved by the court, 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. As discussed in the case background, Crooked Lake attempted to sell the Utility rather than abandon it. However, its efforts were unsuccessful, so it proceeded with the abandonment proceedings. By Order dated March 25, 2021, the Circuit Court acknowledged Polk County's petition to appoint a receiver, and appointed the County as receiver of the Utility in Case No. 2020CA-003194-0000-00.³ Pursuant to Rule 25-30.090(3), Florida Administrative Code (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 most recent annual report has been sent to the County.

Rule 25-30.110(3), F.A.C., requires that a water or wastewater utility which is subject to this Commission's jurisdiction as of December 31 of that year file an annual report. Crooked Lake is current on its annual reports through 2019; however, the Utility has not filed its annual report for 2020. Staff calculates the assessed penalty to be \$282 as of July 2, 2021. The penalty will continue to accrue at \$3 per day until the annual report is filed.

Crooked Lake has paid its Regulatory Assessment Fees (RAFs) through 2018. However, the Utility has not paid its RAFs owed for 2019, 2020, and 2021 (through March 25, 2021, the date when a receiver was appointed). It should be noted that the proposed cancellation of the Utility's certificate, if approved, would not relieve the Utility's obligation regarding outstanding RAFs. Based on the Utility's 2019 operating revenues in the amount of \$227,281, as reported in Crooked Lake's 2019 Annual Report, the Utility owes 2019 RAFs in the amount of \$10,227.65, plus a late penalty in the amount \$2,556.91 (5 percent x 5 months x \$10,227.65), and accrued interest in the amount of \$1,636.42 as of July 22, 2021, resulting in a total amount due of \$14,420.98.

Since the Utility's 2020 Annual Report has not been filed with the Commission to date, staff has calculated an estimated 2020 RAF amount based on the Utility's most recent annual report. Staff estimates that Crooked Lake owes \$10,227.65 in RAFs for 2020, based on the revenues of \$227,281 reported in the Utility's 2019 Annual Report. Further, Crooked Lake is also

³Order Appointing Receiver, Case No. 2020CA-003194-0000-00, In re: Polk County, Florida a political subdivision of the State of Florida vs. Crooked Lake Park Sewerage Company (Fla 10th Cir. Ct. March 25, 2021).

Date: July 22, 2021

responsible for the RAFs for the January 1, 2021 through March 25, 2021 period, which will be due next year, by March 31, 2022. Staff will continue to work with the Utility to obtain the outstanding annual report and RAFs, and will bring the matter to the Commission in a separate docket in the future if necessary.

Based on all the above, staff recommends that the Commission acknowledges the abandonment of Crooked Lake pursuant to Section 367.165, F.S., and appointment of Polk County as the receiver for the Utility. Certificate No. 517-S should be cancelled effective March 25, 2021.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed because no further action is necessary. (Trierweiler)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed because no further action is necessary.