

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: November 22, 2005

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

FROM: Division of Economic Regulation (Redemann, Kaproth, Rieger)
Office of the General Counsel (Gervasi)

RE: Docket No. 050271-WU – Notice of abandonment of water system in Polk County
by The Colinas Group, Inc.
County: Polk

AGENDA: 12/06/05 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Bradley

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050271.RCM.DOC

Case Background

Until September 1, 2005, the Colinas Group, Inc. (CGI), a Florida corporation providing engineering and environmental consulting services, was the receiver of a Class C water utility formerly owned and operated by Lazy S Utility Company (Lazy S). As receiver of the system, CGI provided water service to approximately 105 residential customers in Polk County and purchased the water from the City of Lakeland through a master meter. The utility system is located within the Southwest Florida Water Management District's Southern water use caution area. Wastewater service to this area is provided by septic tanks.

By an order issued on February 7, 2003, in Case No. 53-2002-CA-004961, the Circuit Court of the Tenth Judicial Circuit in Polk County (circuit court) declared Lazy S abandoned and

appointed CGI as receiver of the water system. By Order No. PSC-04-1245-FOF-WU,¹ the Commission acknowledged the appointment of the CGI receivership, granted the company Certificate No. 624-W, and authorized rates and charges for CGI.² Soon thereafter, CGI applied for a staff-assisted rate case (SARC), which case was assigned Docket No. 041371-WU. However, on April 8, 2005, CGI withdrew the SARC application and noticed its intent to abandon the system pursuant to section 367.165, Florida Statutes.

On September 12, 2005, the circuit court issued an order, also in Case No. 53-2002-CA-004961, relieving CGI of its service as receiver of the water system and appointing Polk County (County) as the interim successor receiver effective September 1, 2005. The County is exempt from Commission regulation pursuant to section 367.022(2), Florida Statutes.

This recommendation is to acknowledge the abandonment of the utility system by CGI and the appointment of the County as the interim successor receiver, and to cancel Certificate No. 624-W. The Commission has jurisdiction pursuant to sections 367.165 and 367.071, Florida Statutes.

Discussion of Issues

ISSUE 1: Should the Commission acknowledge the abandonment of the utility system by CGI and the appointment of Polk County as interim successor receiver, and cancel Certificate No. 624-W?

RECOMMENDATION: Yes, the Commission should acknowledge the abandonment of the utility system by CGI and the appointment of Polk County as interim successor receiver. Moreover, consistent with section 367.165(3), Florida Statutes, Certificate No. 624-W should be cancelled effective September 1, 2005. (Gervasi, Rieger, Kaproth)

Staff Analysis: Pursuant to section 367.165(1), Florida Statutes, on April 8, 2005, CGI provided its 60-day notice of intent to abandon the utility system. Consistent with section 367.165(2), Florida Statutes, by order issued September 12, 2005, the circuit court relieved CGI of its service as the receiver of the utility system and appointed the County as the interim successor receiver as of September 1, 2005.

Also on September 12, 2005, the circuit court issued an Order After Status Conference, which contains the circuit court's findings made at a status conference held on the matter on August 26, 2005. The circuit court found that a proposal was made by the City of Lakeland (City) and the County that would allow the customers to connect to the City's water system if 41 customers paid \$2,500 prior to commencement of repairs and construction. The City reported that only 34 customers sent in paper commitments of \$2,500, but that the City would still be able to honor the proposal provided that all 34 customers sent in the money by October 1, 2005. Staff

¹ Issued December 16, 2004, in Docket No. 031087-WU, In re: Application for certificate to provide water service in Polk County by The Colinas Group, Inc., receivers for Lazy S Utility Company.

² The utility was previously exempt from Commission regulation pursuant to section 367.022(8), Florida Statutes, because the owner was charging less than the cost of the water service.

has subsequently learned from speaking with the County and City Attorneys' Offices that enough of the customers have indeed honored their upfront financial commitment such that the proposal will be executed. The City will begin construction of the new water lines with a projected end date of April 2006. Customers will also be required to pay approximately \$365 for connection to a water meter before connecting to the City. In the meantime, the County has hired a licensed operator to run the system during the time of its interim receivership until such time as the system is interconnected to the City's system. Both the County and the City water systems are exempt from Commission regulation pursuant to section 367.022(2), Florida Statutes, as systems owned by governmental authorities.

Pursuant to Rule 25-30.090(3), Florida Administrative Code, within 10 days of the appointment of a 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 2004 annual report have been sent to the County.

Staff notes that CGI has no outstanding regulatory assessment fees (RAFs), and no fines or refunds are owed. CGI has filed its 2004 annual report and paid its 2004 RAFs and there are no outstanding penalties or interest. CGI paid the RAFs for the period of January 1, 2005 through August 31, 2005 to Polk County. On November 16, 2005, Polk County paid the Commission the RAFs for the period of January 1, 2005 through August 31, 2005. CGI is not required to file an annual report for the water system for the period of January 1, 2005 through August 31, 2005, because of the transfer to the County.

Based upon the foregoing, staff recommends that the Commission acknowledge the abandonment of the utility system by CGI and the appointment of the County as interim successor receiver. Moreover, consistent with section 367.165(3), Florida Statutes, Certificate No. 624-W should be cancelled effective September 1, 2005, the effective date of the County's interim successor receivership.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, because no further action is necessary, the docket should be closed. (Gervasi)

STAFF ANALYSIS: Because no further action is necessary, the docket should be closed.