

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-**

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**DATE:** June 8, 2006

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

**FROM:** Division of Economic Regulation (Brady, Redemann, Romig)  
Office of the General Counsel (Fleming)

**RE:** Docket No. 040889-WU – Application for grandfather certificate to operate water utility in Okeechobee County by Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club.  
County: Okeechobee

**AGENDA:** 06/20/06 – Regular Agenda – Proposed Agency Action for Issues 3 and 4 – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Tew

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\040889.RCM.DOC

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### Case Background

On May 13, 2004, the Okeechobee County Board of County Commissioners (County Commission) adopted Resolution No. 2004-16 declaring the water and wastewater utilities in that County subject to the provisions of Chapter 367, Florida Statutes. The Commission acknowledged the resolution on June 15, 2004.<sup>1</sup> Pursuant to Section 367.171(2)(b), Florida

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<sup>1</sup> Order No. PSC-04-0593-FOF-WS, in Docket No. 040469-WS, In Re: Resolution of the Board of County Commissioners of Okeechobee County declaring Okeechobee County subject to the provision of Chapter 367, F.S.

Statutes, each utility engaged in the operation or construction of a system is entitled to receive a certificate for the area served on the day the Chapter becomes applicable to it.

On August 18, 2004, Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club (Blue Heron or utility) filed an application for a grandfather water certificate pursuant to Section 367.171(2)(b), Florida Statutes. The application was found to be deficient. By letter dated October 14, 2004, the utility requested an extension of time to complete deficiencies based on the possible transfer of the facilities to the Okeechobee Utility Authority. When those and subsequent negotiations failed, the utility completed the filing requirements on June 14, 2005. At that time, the utility was still attempting to assemble the books and records necessary to file its 2004 annual report and provide staff with sufficient supporting documentation to perform a desk audit of rates and charges. The utility's 2004 annual report was late-filed on November 22, 2005, and supporting documentation was satisfied on May 2, 2006.

According to the application, the utility facilities were established in 1991 to serve 266 platted lots in the community known as the Blue Heron Golf & Country Club in Okeechobee County. The utility facilities were subsequently transferred three times prior to the Commission obtaining jurisdiction with Messrs. McBrayer and Stevens becoming the owners in August of 2003. Currently, water service is being provided to approximately 90 lots. Wastewater service is provided by individual septic systems. The utility is located in a portion of the South Florida Water Management District (SFWMD) which is considered a critical water supply problem area.

This recommendation addresses the application for a grandfather water certificate and rates and charges. The Commission has jurisdiction pursuant to Sections 367.171 and 367.045, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club's application for a grandfather water certificate be approved?

**Recommendation:** Yes. The application should be approved and the utility should be issued Certificate No. 629-W, effective May 13, 2004, to serve the territory described in Attachment A. Within 30 days from the date of the final order in this docket, the utility should be required to file a statement that it has established books and records in compliance with the NARUC USOA, including the ability to provide separate general ledgers for utility and non-utility records. (Brady, Redemann, Romig, Fleming)

**Staff Analysis:** The utility's application for a grandfather certificate is in compliance with the governing statute and administrative rules. Pursuant to Rule 25-30.030(9), Florida Administrative Code, noticing does not apply to applications for grandfather certificates. The application contains a legal description of the Blue Heron Golf & Country Club community as well as system and territory maps. A description of the territory is appended to this memorandum as Attachment A. The application also contains a recorded warranty deed in the names of Donald E. McBrayer and Marty and Lois Stevens as proof of ownership of the land upon which the treatment facilities are located. The owners are a partnership registered with Florida Department of State, Division of Corporations, to do business as Blue Heron Golf & Country Club.

The water system consists of two wells along with treatment and storage facilities. The permitted capacity is 250,000 gallons of water per day with treatment by aeration, filtration, amoniation, and chlorination. When first contacted by staff in August of 2004, the Florida Department of Environmental Protection (DEP) was in the process of issuing a second Notice of Non-compliance for failure of the utility to test its back-up generator under load, to repair the aerator screens, and to install new media in the carbon filters. According to subsequent statements by the utility, and confirmed with the DEP, the utility tested its generator, although not under load, and an electrician had been contracted to modify the wiring so the generator could operate the plant automatically. The DEP has informed staff that it intends to conduct follow-up inspections on the non-compliance issues and will issue any necessary warning letters giving a time-frame for corrective action.

Staff has verified that the utility is current on annual reports and regulatory assessment fees through 2005. Staff has also explained to the utility the need to maintain its books and records according to the National Association of Regulatory Utility Commissioners (NARUC) uniform system of accounts (USOA) as well as the need to keep utility books and records separate from non-utility books and records. Within 30 days from the date of the final order in this docket, staff recommends that the utility be required to provide a statement that it has established books and records in compliance with the NARUC USOA, including the ability to provide separate general ledgers for utility and non-utility records.

Based upon the above, staff recommends that Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club's application should be approved and the utility issued Certificate No. 629-W, effective May 13, 2004, to serve the territory described in Attachment A.

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Within 30 days from the date of the final order in this docket, the utility should be required to provide a statement that it has established books and records in compliance with the NARUC USOA, including the ability to provide separate general ledgers for utility and non-utility records.

**Issue 2:** What are the appropriate service rates and charges for Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club?

**Recommendation:** The utility's existing monthly rates for water service and its meter installation charge are reasonable and should be continued. The utility should be required to charge these rates and charges until authorized to change them by this Commission in a subsequent proceeding. Pursuant to Rule 25-30.475(1), Florida Administrative Code, the effective date of the tariffs should be the stamped approval date. Within 30 days from the issuance of the final order in this docket, the utility should be required to install a water meter at the clubhouse and begin billing for usage at its existing rates. Within 15 days after the meter installation, the utility should be required to file verification of the installation. When service is reinstated to the pool, the utility should be required to install a water meter at the pool and bill for usage at its existing rates. The utility should be put on notice that, if the golf course requests potable water service from the utility, it must install a potable water meter at the golf course and begin billing for usage at its existing rates. In addition, if the golf course requests irrigation water from the utility, the utility must file for a new class of service for irrigation water pursuant to Section 367.091(5) and (6), Florida Statutes. (Brady, Redemann, Fleming)

**Staff Analysis:** Okeechobee County did not exert jurisdiction over the rates and charges of privately-owned water and wastewater utilities within the County. According to the application, the rates and charges that were in effect when Blue Heron acquired the facilities in August of 2003 were adjusted by Blue Heron effective March 1, 2004, just prior to Okeechobee County turning over jurisdiction to the Commission. This issue addresses the utility's existing monthly rates for water service and its meter installation charge. The utility's remaining service availability charges are discussed in Issue 3. The utility's proposed miscellaneous service charges are discussed in Issue 4.

Blue Heron's existing monthly service rates consist of a base facility charge (BFC) of \$31.18 which includes the first 3,000 gallons of water. Usage over 3,000 gallons is billed at the rate of \$4.08 per thousand gallons. Because the service rates were not authorized by Okeechobee County and appeared high, staff performed a desk audit to determine whether the rates are reasonable. The utility was unable to provide documentation for the original cost of the facilities other than a statement from the original owner that total construction cost for plant and lines was approximately \$500,000. Apparently, all original source documentation was either lost or destroyed by the prior owners and the engineering firm which had constructed the facilities is no longer in existence.

The utility provided staff with a statement of revenues and expenses for 2005, along with supporting documentation for its 2005 operating expenses. The information provided shows that operating expenses exceed total revenues. The utility, which is over 15 years old, has been incurring costs for on-going maintenance as well as costs to upgrade to DEP's new compliance standards for trihalomethanes and haloacetic acids. In addition, the utility contracts for most of its operating and maintenance services. Those contract costs are higher than average due to the utility's relatively remote location. Finally, since the utility is only at approximately one-third build out, its operating costs are spread over a small customer base. Based on supporting documentation, the utility's operating expenses appear reasonable for the utility's size and

location as well as the age and type of treatment facilities. In consideration of all these factors, staff believes that the utility's existing monthly service rates are reasonable and should be continued.

**Meter Installation.** The utility has an existing meter installation charge of \$150 which staff believes is reasonable and should be approved. In addition to residential lots which are metered and billed, the utility provides potable water service to a clubhouse and pool but does not bill them. According to the utility, the clubhouse is currently being used for an office but the pool is closed. Within 30 days from the issuance of the order in this docket, staff recommends that the utility be required to install a water meter at the clubhouse and begin billing for usage at its existing rates. Within 15 days after the meter installation, staff recommends that the utility be required to provide verification of the installation. When service to the pool is reinstated, staff recommends that the utility be required to install a water meter at the pool and bill for usage at its existing rates.

The utility owns a golf course which is currently closed. According to the utility, the golf course is irrigated by unmetered, non-potable water drawn from ponds. Staff has confirmed with SFWMD that Blue Heron has a permit for the use of pond water to irrigate the golf course. Since the golf course is not currently receiving service from the utility, staff recommends that an irrigation rate not be established at this time. However, if the golf course requests potable water service from the utility, the utility should be required to install a potable water meter at the golf course and begin billing for usage at its existing rates. If the golf course requests irrigation water from the utility, Blue Heron should be put on notice that it must file for a new class of service for irrigation water pursuant to Section 367.091(5) and (6), Florida Statutes.

**Conclusion.** The utility's existing monthly rates for water service and its meter installation charge are reasonable and should be continued. The utility should be required to charge these rate and charges until authorized to change them by this Commission in a subsequent proceeding. The utility has provided a proposed water tariff which reflects these rates and charges. Pursuant to Rule 25-30.475(1), Florida Administrative Code, the effective date of the tariffs should be the stamped approval date. Within 30 days from the issuance of the final order in this docket, the utility should be required to install a water meter at the clubhouse and begin billing for usage at its existing rates. Within 15 days after the meter installation, the utility should be required to file verification of the installation. When service is reinstated to the pool, the utility should be required to install a water meter at the pool and bill for usage at its existing rates. The utility should be put on notice that, if the golf course requests potable water service from the utility, it must install a potable water meter at the golf course and begin billing for usage at its existing rates. In addition, if the golf course requests irrigation water from the utility, the utility must file for a new class of service for irrigation water pursuant to Section 367.091(5) and (6), Florida Statutes.

**Issue 3:** What are the appropriate service availability policy and charges for Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club?

**Recommendation:** The service availability policy and plant capacity charge discussed in staff's analysis should be approved. The utility should be required to charge its approved plant capacity charge until authorized to change it by the Commission in a subsequent proceeding. Within 10 days from the issuance of the final order in this docket, the utility should be required to provide notice to all customers of its approved plant capacity charge. Within 10 days after the notice is given, the utility should be required to file a copy of the notice along with a statement attesting to the date the notice was given. Within 30 days from the issuance of the final order in this docket, the utility should be required to provide a revised tariff reflecting its approved service availability policy and plant capacity charge. Pursuant to Rule 25-30.475(1), Florida Administrative Code, the effective date of the tariffs should be the stamped approval date. (Brady, Redemann)

**Staff Analysis:** The utility's service availability policy is to construct its own facilities and recover the cost of lines and plant through a system capacity charge of \$1,250. The current owners do not have original cost documentation for the utility facilities other than a statement from the original owner that the facilities cost \$500,000 to construct. In addition, the current owners do not have documentation showing the amount of contributions-in-aid-of construction (CIAC) collected by the prior owners. Finally, the current owners were not able to provide cost justification or information regarding how the utility's existing service availability charges were determined and, as noted in Issue 2, Okeechobee County did not exert jurisdiction over the rates and charges of privately-owned water and wastewater utilities within the County.

Pursuant to Rule 25-30.570, Florida Administrative Code, if the amount of CIAC has not been recorded on the utility's books and the utility does not submit competent substantial evidence as to the amount of CIAC, the amount of CIAC shall be imputed to be the amount of plant cost attributable to the transmission and distribution system. The utility estimates that approximately 50% of the estimated original construction costs of \$500,000 represents the cost of the lines. Staff believes that an assignment of 50% of the original cost to lines is reasonable. Since the property was initially developer-owned, staff believes it is also reasonable to assume that the lines were donated. Therefore, staff recommends that the estimated \$250,000 for the lines be considered 100% contributed, pursuant to Rule 25-30.570, Florida Administrative Code.

Pursuant to Rule 25-30.580, Florida Administrative Code, the maximum amount of CIAC should not exceed 75% of the total original cost of the utility's facilities and plant at design capacity. It appears that, if the estimated cost of the lines is imputed as CIAC, the existing system capacity charge would result in a contribution level in excess of 90% at design capacity. Staff estimates that a plant capacity of \$400 per equivalent residential connection (ERC) would result in a contribution level of approximately 75% at design capacity. Therefore, staff recommends that a plant capacity charge of \$400 per ERC should be approved for all new connections and that the utility's service availability policy should be adjusted accordingly.

Staff also recommends that, within 10 days from the issuance of the final order in this docket, the utility should be required to provide notice to all customers of its approved plant

capacity charge. Within 10 days after the notice is given, the utility should be required to file a copy of the notice along with a statement attesting to the date the notice was given.

Based on the above, staff recommends that the service availability policy and plant capacity charge discussed in staff's analysis should be approved. The charge is shown on attached Schedule No. 1. The utility should be required to charge its approved plant capacity charge until authorized to change it by the Commission in a subsequent proceeding. Within 10 days from the issuance of the final order in this docket, the utility should be required to provide notice to all customers of its approved plant capacity charge. Within 10 days after the notice is given, the utility should be required to file a copy of the notice along with a statement attesting to the date the notice was given. Within 30 days from the issuance of the final order in this docket, the utility should be required to provide a revised tariff reflecting its approved service availability policy and plant capacity charge. Pursuant to Rule 25-30.475(1), Florida Administrative Code, the effective date of the tariffs should be the stamped approval date.



**Issue 4:** What are the appropriate miscellaneous service charges for Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club.

**Recommendation:** The utility's proposed miscellaneous service and late payment charges are reasonable and should be approved. These charges should be included in the customer notice described in Issue 3. The utility should be required to charge its approved miscellaneous service and late payment charges until authorized to change them by the Commission in a subsequent proceeding. Pursuant to Rule 25-30.475(1), Florida Administrative Code, the effective date of the tariff should be the stamped approval date. (Brady)

**Staff Analysis:** The application also requests miscellaneous service charges consistent with Rule 25-30.460, Florida Administrative Code, which defines four categories of miscellaneous service charges as shown on attached Schedule No. 1. In addition, the utility has requested a \$5.00 late payment charge which is consistent with recent Commission decisions,<sup>2</sup> which have determined that \$5.00 represents the cost to process late payments.

Staff recommends that the utility's proposed miscellaneous service and late payment charges are appropriate and should be approved. These charges should be included in the customer notice described in Issue 3. The utility has provided a proposed water tariff which reflects these rates and charges. Pursuant to Rule 25-30.475(1), Florida Administrative Code, the effective date of the tariff should be the stamped approval date.

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<sup>2</sup> Order No. PSC-06-0331-PAA-WS, issued April 24, 2006, in Docket No. 050902-WS, In Re: Application to transfer assets and Certificate Nos. 590-W and 508-S in Polk County from Lake Haven Utility Associates, Ltd. d/b/a Lake Wales Utility Company to Gold Coast Utility Corp.

**Issue 5:** Should this docket be closed?

**Recommendation:** No. If no timely protest is received to the proposed agency action issues, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending receipt of a statement from the utility that it has established books and records in compliance with the NARUC USOA; verification that notice has been given to customers of the utility's approved plant capacity and miscellaneous service charges; verification of the installation of a water meter at the clubhouse; and receipt a revised tariff reflecting the utility's approved service availability policy and plant capacity charge. Upon receipt and verification of these matters, the docket should be administratively closed. (Fleming)

**Staff Analysis:** If no timely protest is received to the proposed agency action issues, the Order will become final upon the issuance of a Consummating Order. However, the docket should remain open pending receipt of a statement from the utility that it has established books and records in compliance with the NARUC USOA; verification that notice has been given to customers of the utility's approved plant capacity and miscellaneous service charges; verification of the installation of a water meter at the clubhouse; and receipt a revised tariff reflecting the utility's approved service availability policy and plant capacity charge. Upon receipt and verification of these matters, the docket should be administratively closed.

**Donald E. McBrayer and Marty Stevens d/b/a Blue Heron Golf & Country Club**

Okeechobee County  
Water Service Area  
Serving the Blue Heron Golf & Country Club

Township 37 South, Range 35 East  
Sections 22 and 27

From the Northeast corner of Section 27, Township 37 South, Range 35 East, also the Point of Beginning (POB). Thence along the East line of said section South  $01^{\circ} 25' 40''$  West a distance of 2,556.51 feet, Thence along the North right-of-way of Taylor Creek the following 20 courses.

1. South  $79^{\circ} 08' 01''$  West a distance of 1,600.16 feet.
2. North  $56^{\circ} 29' 08''$  West a distance of 837.07 feet.
3. North  $32^{\circ} 35' 16''$  West a distance of 548.73 feet.
4. North  $24^{\circ} 01' 53''$  East a distance of 339.06 feet.
5. North  $22^{\circ} 31' 31''$  East a distance of 91.97 feet.
6. North  $07^{\circ} 41' 10''$  West a distance of 172.80 feet.
7. North  $34^{\circ} 58' 02''$  West a distance of 367.10 feet.
8. North  $74^{\circ} 41' 39''$  West a distance of 11.59 feet.
9. North  $43^{\circ} 19' 20''$  West a distance of 74.55 feet.
10. North  $41^{\circ} 31' 01''$  West a distance of 91.28 feet.
11. North  $62^{\circ} 06' 12''$  West a distance of 185.53 feet.
12. North  $71^{\circ} 32' 00''$  West a distance of 67.11 feet.
13. North  $58^{\circ} 17' 23''$  West a distance of 65.40 feet
14. North  $21^{\circ} 48' 02''$  West a distance of 41.11 feet.
15. North  $24^{\circ} 54' 30''$  West a distance of 50.60 feet.
16. North  $14^{\circ} 26' 57''$  East a distance of 79.16 feet.
17. North  $17^{\circ} 01' 38''$  East a distance of 98.89 feet.
18. North  $11^{\circ} 53' 20''$  West a distance of 59.62 feet.
19. North  $88^{\circ} 27' 25''$  West a distance of .24 feet.
20. South  $89^{\circ} 37' 36''$  East a distance of 92.02 feet now leaving Taylor Creek.

Thence North  $00^{\circ} 22' 24''$  West a distance 55.00 feet.

Thence South  $89^{\circ} 03' 43''$  East a distance of 59.98 feet.

Thence North  $00^{\circ} 11' 29''$  East a distance of 1,578.84 feet. (Leaving Section 27 and entering Section 22)

Thence South  $89^{\circ} 10' 16''$  East a distance of 290.00 feet.

Thence South  $00^{\circ} 11' 29''$  West a distance of 115.04 feet.

Thence South  $89^{\circ} 09' 56''$  East a distance of 667.11 feet.

Thence North  $00^{\circ} 25' 16''$  East a distance of 330.07 feet.

Thence North  $89^{\circ} 10' 09''$  West a distance of 668.43 feet.

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**Attachment A  
(continued)**

Thence North  $00^{\circ} 11' 29''$  East a distance of 330.05 feet.

Thence South  $89^{\circ} 09' 30''$  East a distance of 669.56 feet.

Thence South  $89^{\circ} 10' 59''$  East a distance of 669.98 feet.

Thence South  $00^{\circ} 39' 23''$  West a distance of 1,650.36 feet.

Thence South  $89^{\circ} 10' 06''$  East a distance of 1,326.03 feet to the POB.

**DONALD E. McBRAYER AND MARTY STEVENS  
d/b/a BLUE HERON GOLF & COUNTRY CLUB**

**RATES AND CHARGES**

**Monthly Service Rates**

**Utility Existing and Staff Recommended**

Base Facility Charge (includes first 3,000 gallons)	\$31.18
Charge per 1,000 gallons (after first 3,000 gallons)	\$4.08

**Service Availability Charges**

	<b>Utility Existing</b>	<b>Staff Recommended</b>
Meter Installation Charge	\$ 150.00	\$ 150.00
System Capacity Charge per ERC	\$1,250.00	
Plant Capacity Charge per ERC		\$ 400.00

**Miscellaneous Service Charges**

**Utility Proposed and Staff Recommended**

Initial Connection Fee	\$15.00
Normal Reconnection Fee	\$15.00
Violation Reconnection Fee	\$15.00
Premises Visit Fee (in lieu of disconnection)	\$10.00
Late Payment Fee	\$ 5.00