

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:** November 7, 2007

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Johnson, Kaproth)  
Office of the General Counsel (Klancke)

**RE:** Docket No. 070643-WS – Resolution No. 2007-143 by Charlotte County Board of Commissioners, in accordance with Section 367.171, F.S., rescinding Florida Public Service Commission jurisdiction over private water and wastewater systems in Charlotte County.

**AGENDA:** 11/20/07 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\070643.RCM.DOC

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### Case Background

On September 27, 1994, the Board of County Commissioners of Charlotte County (Charlotte County) adopted a resolution declaring Charlotte County subject to the provisions of Chapter 367, Florida Statutes. This resolution invoked Commission jurisdiction over the private water and wastewater utilities in Charlotte County. The Commission acknowledged the resolution by Order No. PSC-94-1451-FOF-WS, issued November 28, 1994, in Docket No. 941044-WS, In Re: Resolution of Board of Commissioners of Charlotte County declaring Charlotte County subject to provisions of Chapter 367, Florida Statute.

Docket No. 070643-WS  
Date: November 7, 2007

On September 25, 2007, the Charlotte County Board of Commissioners adopted Resolution No. 2007-143 (Resolution), rescinding Commission jurisdiction over the private water and wastewater utilities in Charlotte County effective immediately. This recommendation acknowledges the rescinding of Commission jurisdiction in Charlotte County and the resulting cancellation of utility certificates in Charlotte County. The Commission has jurisdiction pursuant to Sections 367.145, and 367.171, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should the Commission acknowledge Charlotte County's Resolution No. 2007-143, rescinding the Commission's jurisdiction over private water and wastewater utilities in Charlotte County effective September 25, 2007?

**Recommendation:** Yes, Charlotte County's Resolution should be acknowledged as rescinding Commission jurisdiction in Charlotte County effective September 25, 2007. Certificate No. 574-W held by Bocilla Utilities, Inc., Certificate No. 615-W held by Little Gasparilla Water Utility, Inc., and Certificate No. 573-W held by NHC Utilities, Inc. should be cancelled effective September 25, 2007. Certificate Nos. 611-W and 527-S held by Sun River Utilities, Inc. and Certificate No. 495-S held by Utilities, Inc. of Sandalhaven will remain active until Docket Nos. 060285-SU and 070109-WS are closed. Staff should be given administrative authority to cancel the certificates when the dockets close. The cancellation of these certificates does not affect the authority of the Commission to collect, nor the obligation of these utilities to pay, regulatory assessment fees (RAFs), penalties, and interest accrued prior to the September 25, 2007, transfer of jurisdiction to Charlotte County. Little Gasparilla Water Utility, Inc., NHC Utilities, Inc. and Sun River Utilities, Inc. will be responsible for final payment of RAFs for the period of January 1 through September 25, 2007, on or before the prescribed due date. Bocilla Utilities, Inc. and Utilities, Inc. of Sandalhaven will be responsible for final payment of RAFs for the period of July 1, through September 25, 2007, on or before the prescribed due date of January 30, 2008. These utilities will not be responsible for filing an annual report for 2007. Pursuant to Section 367.171(7), Florida Statutes, the Commission retains jurisdiction over Certificate Nos. 599-W and 514-S held by Lake Suzy Utilities, Inc. and Certificate Nos. 613-W and 543-S held by Town and Country Utilities Company because the utilities transverse county boundaries. (Johnson, Kaproth, Klancke)

**Staff Analysis:** As stated in the case background, on September 25, 2007, Charlotte County adopted Resolution No. 2007-143, which specifies its power and authority under Section 367.171, Florida Statutes, to regulate private water and wastewater utilities doing business in the County.

Therefore, staff recommends that the Commission acknowledge Charlotte County's Resolution 2007-143, which is rescinded the Commission's jurisdiction in Charlotte County effective September 25, 2007.

The following seven utilities currently hold certificates of authorization from the Commission to provide water and/or wastewater service in Charlotte County:

<b>Utility</b>	<b>Certificate Number</b>	
Bocilla Utilities, Inc.	574-W	
Lake Suzy Utilities, Inc. d/b/a Aqua Utilities Florida	599-W	514-S
Little Gasparilla Water Utility, Inc.	615-W	
NHC Utilities, Inc.	573-W	
Sun River Utilities, Inc.	611-W	527-S
Town and Country Utilities Company	613-W	543-S
Utilities, Inc. of Sandalhaven		495-S

Pursuant to Section 367.171(5), Florida Statutes, when a utility becomes subject to regulation by a County, all cases in which the utility is a party then pending before the Commission will remain within the jurisdiction of the Commission until disposed of in accordance with the law in effect on the day such case was filed. At the time of the enactment of Charlotte County's Resolution, both Sun River Utilities, Inc. and Utilities, Inc. of Sandalhaven were parties to active cases pending before the Commission.<sup>1</sup> The Sun River Utilities, Inc. amendment case, Docket No. 070109-WS, is scheduled for hearing in January 2008.<sup>2</sup> The Commission granted Utilities, Inc. of Sandalhaven a rate increase in Order No. PSC-07-0865-PAA-SU, issued October 29, 2007, in Docket No. 060285-SU. A substantially affected person has until November 19, 2007, to request a hearing in response to the Order. Therefore, the matters in these dockets remain within the Commission's jurisdiction and the certificates will remain active until the dockets are concluded.

Pursuant to Section 367.171(7), Florida Statutes, when a utility transverses county boundaries the system will remain subject to the Commission's jurisdiction. Lake Suzy Utilities transverses the DeSoto and Charlotte County boundary. Town and Country Utilities Company transverses the Lee and Charlotte County boundary. Therefore, both of these systems will remain subject to the Commission's jurisdiction.

Pursuant to Section 367.145(1)(a), Florida Statutes, and Rule 25-30.120(2), Florida Administrative Code, cancellation of the utility certificates does not affect the authority of the Commission to collect, nor the obligation of the utilities to pay, regulatory assessment fees, penalties, and interest accrued prior to September 25, 2007. However, pursuant to Rule 25-30.110(3), Florida Administrative Code, these utilities will not be responsible for an annual report for 2007 because they would not be subject to the Commission's jurisdiction as of December 31, 2007.

Little Gasparilla Water Utility, Inc., NHC Utilities, Inc. and Sun River Utilities, Inc. have paid their 2006 RAFs for the period of January 1 through December 31, 2006, and have paid their RAFs for all previous years. Bocilla Utilities, Inc. and Utilities, Inc. of Sandalhaven have paid their RAFs through June 30, 2007, and have paid their RAFs for all previous years. Little Gasparilla Water Utility, Inc., NHC Utilities, Inc. and Sun River Utilities, Inc. will be responsible for final payment of RAFs for the period of January 1 through September 25, 2007, on or before the prescribed due date of March 31, 2008. Bocilla Utilities, Inc. and Utilities, Inc. of Sandalhaven will be responsible for final payment of RAFs for the period of July 1, 2007, through September 25, 2007, on or before the prescribed due date of January 31, 2008.

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<sup>1</sup> Sun River Utilities, Inc. and Utilities Inc. of Sandalhaven both have pending cases before the Commission. The Commission granted Utilities Inc. of Sandalhaven a rate increase in Docket No. 060285-SU, In Re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven. Sun River Utilities, Inc. requested an extension of service area in Docket No. 070109-WS, In Re: Application for amendment of certificates 611-W and 527-S to extend water and wastewater service areas to include certain land in Charlotte County by Sun River Utilities, Inc. (f/k/a MSM Utilities, LLC.)

<sup>2</sup> Charlotte County filed a Motion for Summary Final Order or Relinquishment of Jurisdiction in Docket No. 070109-WS on October 9, 2007. Staff has filed a recommendation in Docket No. 070109-WS for the November 20, 2007, agenda conference, addressing Charlotte County's motions.

Bocilla Utilities, Inc., Little Gasparilla Water Utility, Inc., NHC Utilities, Inc., Sun River Utilities, Inc. and Utilities Inc. of Sandalhaven have filed their 2006 annual reports and have filed their annual reports for all previous years. These utilities will not be responsible for filing an annual report for 2007.

Based upon the above, staff recommends that the Commission acknowledge Charlotte County's Resolution No. 2007-143 rescinding Commission jurisdiction in Charlotte County effective September 25, 2007. Certificate No. 574-W held by Bocilla Utilities, Inc., Certificate No. 615-W held by Little Gasparilla Water Utility, Inc., and Certificate No. 573-W held by NHC Utilities, Inc. should be cancelled effective September 25, 2007. Certificate Nos. 611-W and 527-S held by Sun River Utilities, Inc. and Certificate No. 495-S held by Utilities, Inc. of Sandalhaven will remain active until Docket Nos. 060285-SU and 070109-WS are closed. Staff should be given administrative authority to cancel the certificates when the dockets close. The cancellation of these certificates does not affect the authority of the Commission to collect, nor the obligation of these utilities to pay, RAFs, penalties, and interest accrued prior to the September 25, 2007, transfer of jurisdiction to Charlotte County. Little Gasparilla Water Utility, Inc., NHC Utilities, Inc. and Sun River Utilities, Inc. will be responsible for final payment of RAFs for the period of January 1 through September 25, 2007, on or before the prescribed due date of March 31, 2008. Bocilla Utilities, Inc. and Utilities, Inc. of Sandalhaven will be responsible for final payment of RAFs for the period of July 1, through September 25, 2007, on or before the prescribed due date of January 30, 2008. These utilities will not be responsible for filing an annual report for 2007. Pursuant to Section 367.171(7), Florida Statutes, the Commission retains jurisdiction over Certificate Nos. 599-W and 514-S held by Lake Suzy Utilities, Inc. and Certificate Nos. 613-W and 543-S held by Town and Country Utilities Company because the utilities transverse county boundaries.

**Issue 2:** Should this docket be closed?

**Recommendation:** No. This docket should remain open until Docket Nos. 060285-SU and 070109-WS are closed, after which time this docket should be closed administratively. (Klancke)

**Staff Analysis:** This docket should remain open until Docket Nos. 060285-SU and 070109-WS are closed, after which time this docket should be closed administratively.