

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:** July 2, 2008

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

**FROM:** Division of Economic Regulation (Brady, Kaproth)  
Division of Administrative Services (Belcher)  
Office of the General Counsel (Klancke)

**RE:** Docket No. 080132-WU – Application for transfer of water facilities to Okeechobee Utility Authority, and cancellation of Certificate No. 629-W, by Blue Heron Golf & Country Club.

**AGENDA:** 07/15/08 – Regular Agenda – Proposed Agency Action for Issue 1 – 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\080132.RCM.DOC

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### Case Background

Blue Heron Golf & Country Club (Blue Heron or utility) is a Class C utility which provides potable water service to approximately 964 equivalent residential connections in Okeechobee County. The utility is located in a portion of the South Florida Water Management District which is considered a critical water supply problem area. The utility's 2007 annual report indicates gross revenues of \$47,150 and a net operating loss of \$11,577.

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Blue Heron was granted water Certificate No. 629-W effective May 13, 2004.<sup>1</sup> There have been no further certification actions. On March 4, 2008, an application was submitted by Okeechobee Utility Authority (OUA) for the transfer of Blue Heron's water facilities to OUA and for the cancellation of Certificate No. 629-W. On April 30, 2008, Blue Heron filed a request for a waiver of the \$489 penalty owed for the late-filed 2006 annual report.

Issue 1 addresses the request for waiver of the annual report penalties for 2006. Issue 2 addresses the transfer of the water facilities to OUA. The Commission has jurisdiction pursuant to Sections 367.071 and 367.121, Florida Statutes (F.S.).

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<sup>1</sup> Order No. PSC-06-0595-PAA-WU, issued July 7, 2006, in Docket No. 040889-WU, In Re: 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.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve Blue Heron Golf & Country Club's request for a waiver of its 2006 annual report fine?

**Recommendation:** No. The utility has not demonstrated good cause for noncompliance. The penalty of \$489, as prescribed by Rule 25-30.110(7), Florida Administrative Code (F.A.C.), should be assessed. Payment should be made within 30 days of the date of this Commission's vote. (Kaproth, Klancke)

**Staff Analysis:** On April 30, 2008, the co-owner of Blue Heron, Mr. Donald E. McBrayer, filed a request for a waiver of the \$489 penalty owed for late-filing the utility's 2006 annual report. In this request, Mr. McBrayer explained that his partner and co-owner, Mr. Marty Stevens, had a liver transplant on November 27, 2007. Mr. McBrayer further asserted that he was involved in trips to visit Mr. Stevens and, therefore, he was not able to file the annual report. Mr. McBrayer explained that a waiver of the annual report fine was appropriate due to Mr. Steven's transplant and the associated care that he required. Mr. McBrayer further stated that, although Mr. Stevens has recovered, the liver transplant took a tremendous toll on Mr. Stevens in both money and time.

Rule 25-30.110(3), F.A.C., requires utilities subject to the Commission's jurisdiction as of December 31st of any year to file an annual report for that year. The annual report is due by March 31st for the preceding year ending in December 31st. During the time that the utility has been subject to the Commission's jurisdiction, it has filed all of its annual reports late and was assessed penalties pursuant to Rule 25-30.110(7)(b), F.A.C. Rule 25-30.110(7)(b), F.A.C., specifies that Class C utilities are assessed \$3 per day for every day the report is filed after the due date. Blue Heron paid the late fee penalties for each of its reports with the exception of its 2006 report.

With respect to its 2004 annual report, Blue Heron received two filing extensions which permitted the report to be filed on August 12, 2005. The report was late-filed on November 22, 2005. A fine of \$306 was assessed which was paid on September 11, 2006. The utility did not request an extension for filing its 2005 and 2006 annual reports. Blue Heron's 2005 annual report was late-filed on June 6, 2006. A fine of \$201 was assessed which was paid on June 7, 2006. Blue Heron's 2006 annual report was late-filed on September 10, 2007, resulting in the assessment of a fine of \$489. Two reminder notices dated May 2 and June 6, 2007, were sent to Blue Heron regarding the fine. The utility's request for a waiver of the fine is the subject of this issue. Finally, Blue Heron received an extension to file its 2007 annual report until April 30, 2008. The report was not filed until May 16, 2008. A fine of \$48 was assessed which was paid on May 28, 2008.

Rule 25-30.110(6)(c), F.A.C., states that a utility shall be subject to the penalties imposed by the rule unless the utility demonstrates good cause for the noncompliance. Further, the Commission may, in its discretion, impose penalties for noncompliance that are greater or lesser than provided by the rule. Since Blue Heron has never filed any of its annual reports on time, it appears that there are reasons other than Mr. Stevens' health for the consistent failure to comply

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with the requirements of Rule 25-30.110(3), F.A.C. Staff believes that it was Mr. McBrayer's responsibility, as a co-owner, to conduct the utility's business matters while Mr. Stevens was ill. At a minimum, staff believes that Mr. McBrayer should have requested an extension to late-file Blue Heron's 2006 annual report. For these reasons, staff believes the utility has not demonstrated good cause for noncompliance. The penalty of \$489 as prescribed by Rule 25-30.110(7), F.A.C., should be assessed. Payment should be made within 30 days of the date of the Commission's vote in this matter.

**Issue 2:** Should the transfer of Blue Heron's water facilities to OUA and the cancellation of Certificate No. 629-W be acknowledged?

**Recommendation:** Yes. The transfer of Blue Heron's water facilities to OUA should be acknowledged as a matter of right pursuant to Section 367.071(4)(a), F.S., and Certificate No. 629-W should be cancelled effective March 4, 2008. (Brady, Klancke)

**Staff Analysis:** On March 4, 2008, an application was filed for the transfer the Blue Heron's water distribution facilities and customers to OUA and for the cancellation of Certificate No. 629-W. The application is in compliance with the requirements of Section 367.071(4)(a), F.S., and Rule 25-30.037(4), F.A.C. According to the application, OUA began providing water service to Blue Heron's customers on March 4, 2008. Therefore, March 4, 2008, is the effective date of the transfer.

Blue Heron and OUA entered into an agreement effective December 11, 2007, to transfer Blue Heron's water distribution system and other assets to OUA. No purchase price was tendered for the acquisition, as the assets were donated to OUA. OUA was responsible for the design and construction of the upgrades necessary for the connection to OUA's water system. Blue Heron is responsible for the cost of the connection, which will be financed through a promissory note secured by the lands owned by Blue Heron, and for the removal of the existing water treatment facility.

Pursuant to Section 367.071(4)(a), F.S., the transfer of facilities to a governmental authority shall be approved as a matter of right. As such, no notice of the transfer is required and no filing fees apply. The application contains a statement that Blue Heron does not hold any customer deposits. In addition, the application indicated that OUA had received a copy of the utility's most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction.

In accordance with Rule 25-30.110, F.A.C., Blue Heron has filed its annual report for 2007 and prior years. The utility is not required to submit an annual report for 2008 as it will not be subject to the jurisdiction of the Commission as of December 31, 2008. Pursuant to Rule 25-30.120, F.A.C., Blue Heron has paid Regulatory Assessment Fees (RAFs) for 2007 and all prior years. Blue Heron will be responsible for 2008 RAFs for the period January 1, 2008, through March 4, 2008, to be paid on or before March 31, 2009. Issue 1 addresses Blue Heron's request for waiver of the penalty owed for late-filing the utilities 2006 annual report. There are no other penalties or interest owed by Blue Heron for annual reports or RAFs.

Based on the above, staff recommends that the transfer of Blue Heron's water facilities to Okeechobee Utility Authority should be acknowledged as a matter of right pursuant to Section 367.071(4)(a), F.S., and Certificate No. 629-W should be cancelled effective March 4, 2008.

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**Issue 3**: Should this docket be closed?

**Recommendation**: No. If no protest to the proposed agency action issue is filed by a substantially affected person within 21 days of the date of the order, a consummating order should be issued. However, the docket should remain open pending verification of payment of the penalty for the late-filed 2006 annual report. Upon verification of payment, the docket should be administratively closed. (Klancke)

**Staff Analysis**: If no protest to the proposed agency action issue is filed by a substantially affected person within 21 days of the date of the order, a consummating order should be issued. However, the docket should remain open pending verification of the payment of the penalty for the late-filed 2006 annual report. Upon verification of payment, the docket should be administratively closed.