

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

### -M-E-M-O-R-A-N-D-U-M-

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**DATE:** September 24, 2009

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

**FROM:** Division of Economic Regulation (Clapp, Kaproth)  
Office of the General Counsel (Hartman)

**RE:** Docket No. 090390-SU – Application for transfer of wastewater facilities to Florida Keys Aqueduct Authority in Monroe County, and cancellation of Certificate No. 205-S, by Key Haven Utility Corporation.  
County: Monroe

**AGENDA:** 10/6/09 – 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\090390A.RCM.DOC

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### Case Background

Key Haven Utility Corporation (Key Haven, seller, or utility) is a Class B utility providing wastewater service to approximately 443 wastewater equivalent residential connections (ERC) in Monroe County. The utility's 2008 annual report indicates that the utility had gross wastewater revenue of \$455,278 and net operating income of \$19,122.

The utility's wastewater system was originally issued Certificate No. 205-S in 1976.<sup>1</sup> The utility has had no transfers or amendments since it received its certificate.

Florida Keys Aqueduct Authority (FKAA or buyer) is an independent special district created by the Florida Legislature pursuant to Chapter 76-441 Laws of Florida. This special district is a governmental authority as defined by Section 1.01(8), Florida Statutes (F.S.), and therefore is a non-jurisdictional entity. FKAA provides both water and wastewater service.

On July 28, 2009, Key Haven submitted an application for transfer of utility assets to FKAA and cancellation of Certificate No. 205-S. The recommendation, which said the closing had taken place, was deferred from the September 15, 2009 agenda conference because the parties delayed the closing. The actual closing took place on September 17. Therefore, the recommendation has been revised to include the correct closing date and is now ready for consideration at the October 6, 2009 agenda conference. The Commission has jurisdiction pursuant to Section 367.071, F.S.

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<sup>1</sup> Order No. 7404, issued August 25, 1976, in Docket Nos. 760052-S, In re: Application of Key Haven Utility Corporation for a certificate to operate an existing sewer system in Monroe County, Florida, pursuant to Section 367.171, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should the transfer be approved?

**Recommendation:** Yes. The transfer of Key Haven Utility Corporation wastewater facilities to Florida Keys Aqueduct Authority should be acknowledged as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate No. 205-S should be cancelled effective ~~August 25~~ September 17, 2009. Key Haven should be required to file its actual regulatory assessment fee (RAF) return and pay any additional RAFs owed for July 1, 2009, through September 17, 2009, by January 30, 2010. (Clapp, Kaproth, Hartman)

**Staff Analysis:** On July 28, 2009, Key Haven filed an application to transfer the utility's service territory and facilities to FKAA pursuant to Section 367.071(4)(a), F.S., and Rule 25-30.037(4), Florida Administrative Code (F.A.C.), and to cancel Certificate No. 205-S. The actual closing of the transfer took place on ~~is scheduled for~~ September 8 17, 2009. Therefore, September 8 17, 2009, is the effective date of the transfer.

The seller and buyer agreed to the transfer of the wastewater facilities. Pursuant to Section 367.071(4), 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 the utility holds no customer deposits. Therefore, no deposits or accumulated interest will be transferred to the buyer or applied to the customer accounts. The application also stated that the buyer obtained 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., Key Haven filed its annual reports for 2008 and prior years. Key Haven is not required to file an annual report for 2009 because of its transfer to the FKAA prior to the end of 2009. Pursuant to Rule 25-30.120, F.A.C., the utility's regulatory assessment fees (RAFs) for 2008 and all prior years have been paid. Key Haven has paid its RAFs for January 1, 2009, through June 30, 2009, and its estimated RAFs for July 1, 2009 through August 25, 2009. Key Haven should be required to file its actual RAF return and pay any additional RAFs owed for July 1, 2009, through September 17, 2009, by January 30, 2010. ~~Therefore, Key Haven does not owe any additional RAFs after the transfer to FKAA on August 25, 2009.~~

Based on the above, staff recommends that the transfer of Key Haven Utility Corporation wastewater facilities to FKAA should be acknowledged as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate No. 205-S should be cancelled effective ~~August 25~~ September 17, 2009. Key Haven should be required to file its actual RAF return and pay any additional RAFs owed for July 1, 2009, through September 17, 2009, by January 30, 2010.

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

**Recommendation**: Yes. This docket should be closed because no further action is necessary.  
(Hartman)

**Staff Analysis**: This docket should be closed because no further action is necessary.