

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:** March 4, 2010

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

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

*Handwritten notes and signatures:*  
@ PP perm JS CSK  
JB  
CW  
CRB

**RE:** Docket No. 060332-WS – Application for transfer of water and wastewater facilities to Marion County, and for cancellation of Certificate Nos. 312-S and 356-W, by Loch Harbour Utilities, Inc.

Docket No. 090304-WS – Notice of abandonment of water and wastewater system in Marion County by Loch Harbour Utilities, Inc.  
County: Marion

**AGENDA:** 03/16/10 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative (060332-WS)  
Argenziano (090304-WS)

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\060332.RCM.DOC

RECEIVED-FPSC  
10 MAR -4 AM 10:37  
COMMISSION  
CLERK

### Case Background

Loch Harbour Utilities, Inc. (Loch Harbour or utility) is a Class C utility providing water and wastewater service to approximately 52 residential service customers in Marion County. The utility's 2004 annual report indicates that the utility had gross revenues of \$4,185 and \$5,754 and net operating losses of \$2,481 and \$2,051 for water and wastewater, respectively.

DOCUMENT NUMBER-DATE  
01489 MAR -4 0  
FPSC-COMMISSION CLERK

The utility's water and wastewater systems were originally issued Certificate Nos. 356-W and 312-S in 1982.<sup>1</sup> No additional dockets have been opened concerning the territory served or the ownership of the utility.

On April 7, 2006, Loch Harbour submitted an application for transfer of service territory and facilities to Marion County (the County) and for cancellation of Certificate Nos. 356-W and 312-S. The utility subsequently asked for additional time to negotiate some final details with the County. The County and the utility's negotiations extended over several years.

On May 8, 2009, Loch Harbour filed a 75-day notification of abandonment of the utility. On July 17, 2009, the utility asked that the Commission's actions regarding the abandonment be delayed pending the outcome of a County hearing. The Commission has jurisdiction pursuant to sections 367.071 and 367.165, Florida Statutes (F.S.).

---

<sup>1</sup> Order No. 10929, issued June 23, 1982, in Docket No. 810300-WS, In re: Application of Loch Harbour Utilities, Inc. for a certificate to operate a water and sewer utility and for a staff assisted rate increase.

### Discussion of Issues

**Issue 1:** Should the transfer of the Loch Harbour Utilities, Inc. water and wastewater facilities to Marion County and the cancellation of Certificate Nos. 356-W and 312-S be acknowledged?

**Recommendation:** Yes. The transfer of the Loch Harbour water and wastewater facilities to Marion County should be acknowledged, as a matter of right, pursuant to section 367.071(4)(a), F.S., and Certificate Nos. 356-W and 312-S should be cancelled effective November 30, 2005. (Clapp, Marsh, Jaeger, Hartman)

**Staff Analysis:** On April 7, 2006, Loch Harbour filed an application to transfer the utility's service territory and facilities to the County pursuant to section 367.071(4)(a), F.S., and Rule 25-30.037(4), Florida Administrative Code (F.A.C.). The application contains a statement that the County obtained the most recently available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction. The application also states that the utility holds no customer deposits; therefore, no deposits or accumulated interest will be transferred to the County or applied to the customer accounts. At the time of the application, the closing had not taken place and several details were left for the utility to complete. The utility requested additional time to complete the final details.

On May 8, 2009, Loch Harbour filed a 75-day notification of abandonment of the utility. Again, the utility requested additional time to negotiate final details with the County. Staff believes that Docket No. 090304-WS was filed as an effort to push for finalization of the outstanding issues between the County and the utility.

According to a December 14, 2009 letter from the Marion County attorney, the County assumed operation and possession of the system in late November 2005. The County has continued operating the system since that time. The final title documents have not been consummated due to several contractual items not being completed by the utility. On July 21, 2009, the Board of Marion County Commissioners directed county staff to accept the transfer upon the payment of certain transfer fees by the utility, and the utility securing the reissuance and transfer of the operating permit to the system from the Florida Department of Environmental Protection (FDEP). Currently the utility and the County are in the process of completing the renewal application of the FDEP operating permit.

Staff verified that, in accordance with Rule 25-30.110, F.A.C., Loch Harbour filed its annual reports for 2004 and prior years. Staff verified that, in accordance with Rule 25-30.120, F.A.C., the utility's regulatory assessment fees (RAFs) for 2004 and all prior years, have been paid. However, no RAFs have been paid for 2005. This will be addressed in detail in Issue 2.

According to section 367.022(2), F.S., systems owned, operated, managed, or controlled by governmental authorities are exempt from Commission regulation. Therefore, staff recommends that the transfer of the Loch Harbour water and wastewater facilities to Marion County should be acknowledged, as a matter of right, pursuant to section 367.071(4)(a), F.S., and Certificate Nos. 356-W and 312-S should be cancelled effective November 30, 2005.

**Issue 2:** Should the Commission proceed to request approval to write off the uncollected regulatory assessment fees, fines, and penalties that have not been submitted?

**Recommendation:** Yes. The Commission should proceed to obtain approval from the Florida Department of Financial Services to write off the uncollected RAFs, fines, and penalties that have not been submitted. (Marsh, Jaeger, Hartman)

**Staff Analysis:** Staff verified that, in accordance with Rule 25-30.110, F.A.C., Loch Harbour filed its annual reports for 2004 and prior years. No annual report is required for 2005 because the utility was operated by a governmental entity prior to the end of 2005. Staff verified that, in accordance with Rule 25-30.120, F.A.C., the utility's RAFs for 2004 and all prior years, have been paid. However, no RAFs have been paid for 2005.

RAFs are intended to cover the costs incurred in the Commission's regulation of utilities, and Section 367.145, F.S., requires water and wastewater utilities to remit RAFs to this Commission. Pursuant to Section 350.113(4), F.S., and Rule 25-30.120(7)(a), F.A.C., a statutory penalty plus interest shall be assessed against any utility that fails to timely pay its RAFs, in the following manner:

1. Five percent of the fee if the failure is for not more than 30 days, with an additional five percent for each additional 30 days or fraction thereof during the time in which failure continues, not to exceed a total penalty of 25 percent.
2. The amount of interest to be charged is one percent for each 30 days or fraction thereof, not to exceed a total of 12 percent annum.

Payment of RAFs, plus associated penalties and interest, is required by Sections 367.145(1), and 350.113(3) and (4), F.S. Therefore, the Commission does not have the power to waive the requirement for payment of RAFs, associated penalties and interest. Pursuant to Sections 367.145(1)(b) and 367.161, F.S., and Rule 25-30.120(7)(b), F.A.C., the Commission may impose an additional penalty upon a utility for failure to pay RAFs in a timely manner.

Loch Harbour paid \$188.33 for water and \$258.91 for wastewater on March 22, 2005, for its 2004 RAFs, and no payment for its 2005 RAFs. The utility system was physically turned over to Marion County Utilities in 2005 and the day-to-day operations, repairs, maintenance and collections of accounts have been performed by the county since that time. A notice of delinquency for failure to remit the 2005 RAFs was mailed to Loch Harbour on April 1, 2006. Based on 2004 revenues, as of the date Marion County began operation of the utility, November 30, 2005, the utility owed RAFs for 2005 of approximately \$409.26 (\$172.34 for water and \$236.92 for wastewater). The penalty through March 16, 2010 is \$102.31, and the accrued interest is \$196.44. The total owed as of the agenda date is \$708.02.

Because the former owner abandoned the utility, it is unlikely that the past due RAFs will be paid. Staff has inquired several times about the unpaid amount but has not received a response. It appears that further collection efforts would not be cost-effective and that collection of any fees is highly unrealistic. Therefore, consistent with Commission practice, staff

Docket Nos. 060332-WS, 090304-WS

Date: March 4, 2010

recommends that the Commission direct staff to refer Loch Harbour's unpaid RAFs for 2005 to the Department of Financial Services for permission to write off the account as uncollectible.

**Issue 3:** Should Docket Nos. 060332-WS and 090304-WS be closed?

**Recommendation:** Yes. The utility has requested that action not be taken with regard to its notice of abandonment pending the approval of the transfer. If the Commission acknowledges the transfer to Marion County as recommended in Issue 1, Docket No. 090304-WS is effectively moot. If the Commission approves staff's recommendation in Issue 2, upon referral of the unpaid regulatory assessment fees, penalties, and interest to the Department of Financial Services regarding authority to write off the account as uncollectible, these dockets should be closed administratively. (Jaeger, Hartman)

**Staff Analysis:** The utility has requested that action not be taken with regard to its notice of abandonment pending the approval of the transfer. If the Commission acknowledges the transfer to Marion County as recommended in Issue 1, Docket No. 090304-WS is effectively moot. If the Commission approves staff's recommendation in Issue 2, upon referral of the unpaid regulatory assessment fees, penalties, and interest to the Department of Financial Services regarding authority to write off the account as uncollectible, these dockets should be closed administratively.