

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

OCT 28 11:10:12  
CLERK

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

**DATE:** October 28, 2010

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

**FROM:** Division of Economic Regulation (Jones-Alexis, Golden, Hillier, Marsh)  
Office of the General Counsel (Fleming)

*Handwritten notes:* mega PD MB CR [unclear] JS [unclear] W

**RE:** Docket No. 100387-SU – Application for transfer of wastewater facilities to City of Avon Park, in Highlands County, and cancellation of Certificate No. 423-S, by C & H Utilities, Inc.

**AGENDA:** 11/09/10 – 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\100387.RCM.DOC

### Case Background

C & H Utilities, Inc. (C & H or Utility) is a Class C Utility providing service to approximately 54 water customers and 93 wastewater customers in Highlands County. The Utility is within the South Florida Water Management District in the Southern Water Use Caution Area. C & H's 2009 annual report indicates that the Utility's water system had gross revenues of \$7,356 and a net operating loss of (\$2,260), and the wastewater system had gross revenues of \$12,984 and a net operating loss of (\$4,711).

DOCUMENT NUMBER 08963

08963 OCT 28 2010

FPSC-COMMISSION CLERK

Docket No. 100387-SU  
Date: October 28, 2010

C & H was originally granted Certificate No. 423-S in 1987 to provide wastewater service in the Valencia Acres Subdivision of Highlands County.<sup>1</sup> In 1991, the Utility was issued Certificate No. 536-W to provide water service in the Hickory Ridge Subdivision of Highlands County.<sup>2</sup> The Utility has had one transfer and no amendments since it was certificated.<sup>3</sup> On August 27, 2010, the Utility filed an application for transfer of its wastewater facilities and territory to the City of Avon Park (the City) and cancellation of Certificate No. 423-S. C & H will continue to operate its water system under Certificate No. 536-W.

The purpose of this recommendation is to acknowledge the transfer of C & H's wastewater system to the City as a matter of right and to cancel Certificate No. 423-S to reflect the deletion of the Valencia Acres Subdivision territory. The Commission has jurisdiction, pursuant to Sections 367.071 and 367.022(2), Florida Statutes (F.S.).

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<sup>1</sup> Order No. 17538, issued May 11, 1987, in Docket No. 861567-SU, In re: Application of C&H UTILITIES CORPORATION for transfer of facilities from HIGHLANDS UTILITIES CORPORATION in Highlands County, Florida.

<sup>2</sup> Order No. 25201, issued October 11, 1991, in Docket No. 910600-WU, In re: Application of C & H Utilities, Inc. for a water certificate in Highlands County.

<sup>3</sup> Order No. PSC-95-1505-FOF-WS, issued December 5, 1995, in Docket No. 941037-WS, In re: Application for transfer of facilities and control of Certificates Nos. 536-W and 423-S issued to C & H Utilities, Inc. in Highlands County from Howard E. and Coleen C. Short to Wendell L. and Mary Jane Faircloth.

### **Discussion of Issues**

**Issue 1:** Should the transfer of the wastewater facilities and territory from C & H Utilities, Inc. to the City of Avon Park be acknowledged as a matter of right and Certificate No. 423-S be cancelled?

**Recommendation:** Yes. The transfer of C & H's wastewater facilities and territory to the City should be acknowledged as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate No. 423-S should be cancelled effective September 28, 2010. (Jones-Alexis, Golden, Hillier, Marsh, Fleming)

**Staff Analysis:** On August 27, 2010, C & H filed an application to transfer its wastewater service territory and facilities to the City and cancel Certificate No. 423-S. Pursuant to Section 367.071(4)(a), F.S., the sale of facilities to a governmental authority shall be acknowledged as a matter of right. As such, no notice of the transfer is required and no filing fees apply. In addition, the City is exempt from regulation by the Commission as a governmental authority, in accordance with Section 367.022(2), F.S. The application is in compliance with Section 367.071(4)(a), F.S., and Rule 25-30.037(4), Florida Administrative Code (F.A.C.).

On June 28, 2010, C & H and the City executed an Asset Purchase Agreement (Agreement). A copy of this contract was included in the application. The application indicates a proposed transfer date of September 27, 2010. However, staff has confirmed that the City officially assumed responsibility over the wastewater system on September 28, 2010. The effective date of the transfer, therefore, is September 28, 2010. Subsequently, the sale of the system closed on September 30, 2010.

In accordance with Section 367.071(4)(a), F.S., and Rule 25-30.037(4)(e), F.A.C., the application states that the City has 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. The application also includes a statement that C & H did not collect deposits and, therefore, does not owe refunds or interest to any customers, pursuant to Rule 25-30.037(4)(g), F.A.C. Additionally, pursuant to Rule 25-30.037(4)(d), F.A.C., the Agreement states that the Utility's wastewater treatment plant and the property associated with the plant are specifically excluded from the sale. However, the collection facilities will be transferred to the City. The Agreement notes that the Utility intends to decommission the plant, and staff has confirmed with a Utility representative that it intends to dismantle the plant.

In accordance with Rule 25-30.120, F.A.C., C & H has paid regulatory assessment fees (RAFs) for 2009 and all prior periods. The Utility has committed that it will pay all outstanding wastewater RAFs accrued through the transfer date of September 28, 2010, by November 4, 2010. C & H has also filed its annual reports for 2009 and all prior years. Since the Utility will continue to be jurisdictional with respect to its water facilities and territory, it will be required to file a 2010 annual report, pursuant to Rule 25-30.110(3), F.A.C., and pay RAFs, pursuant to Rule 25-30.120, for its water system. In accordance with Section 367.022(2), F.S., the Utility's wastewater system will be exempt from regulation by the Commission once it acknowledges the application for transfer to the City as a matter of right.

Docket No. 100387-SU  
Date: October 28, 2010

Staff recommends that the transfer of C & H's wastewater facilities and territory to the City be acknowledged as a matter of right, pursuant to Section 367.071(4)(a), F.S., and Certificate No. 423-S be cancelled effective September 28, 2010. A description of the territory deleted as a result of this transfer is appended to this recommendation as Attachment A.

Docket No. 100387-SU  
Date: October 28, 2010

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

**Recommendation:** Yes. If the Commission approves staff's recommendation in Issue 1, the docket should be closed as no further action is required. (Fleming, Jones-Alexis)

**Staff Analysis:** If the Commission approves staff's recommendation in Issue 1, the docket should be closed as no further action is required.

Docket No. 100387-SU  
Date: October 28, 2010

Attachment A  
Page 1 of 1

C & H Utilities, Inc.  
Highlands County  
Description of Deleted Wastewater Territory

Township 35 South, Range 28 East, Section 21; the Northwest 1/4 of the Southeast 1/4 of Section 21 known as Valencia Acres.