

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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. 060332-WS

In re: Notice of abandonment of water and wastewater system in Marion County by Loch Harbour Utilities, Inc.

DOCKET NO. 090304-WS  
ORDER NO. PSC-10-0172-FOF-WU  
ISSUED: March 25, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman  
LISA POLAK EDGAR  
NATHAN A. SKOP  
DAVID E. KLEMENT  
BEN A. "STEVE" STEVENS III

FINAL ORDER ACKNOWLEDGING TRANSFER AND  
CANCELING CERTIFICATES NOS. 356-W AND 312-S

BY THE COMMISSION:

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 indicated that the Utility has gross revenues of \$4,185 and \$5,754 and net operating losses of \$2,481 and \$2,051 for water and wastewater, respectively.

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.

<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.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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. We have jurisdiction pursuant to Sections 367.071 and 367.165, Florida Statutes (F.S.).

#### Transfer of Utility

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. According to a December 14, 2009, letter from the 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.

In accordance with Rule 25-30.110, F.A.C., Loch Harbour filed its annual reports for 2004 and prior years. Also, in accordance with Rule 25-30.120, F.A.C., the Utility paid its regulatory assessment fees (RAFs) for 2004 and all prior years. However, for 2005, no RAFs have been paid. This will be addressed in detail below.

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

#### Write Off of Uncollected Regulatory Assessment Fees, Fines, and Penalties

Our 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. Our staff also verified

that in accordance with Rule 25-30.120, F.A.C., the Utility paid RAFs for 2004 and all prior years. However, no RAFs have been paid for 2005.

RAFs are intended to cover the costs incurred in our 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, we do 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., we could 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). Based on these estimates, the penalty and accrued interest through March 16, 2010, would be \$102.31 and \$196.44, respectively, for a total amount due as of that date of \$708.02.

Because the former owner abandoned the Utility, it is unlikely that the past due RAFs will be paid. Our 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 our practice, our staff shall refer Loch Harbour's unpaid RAFs for 2005, plus penalties and interest, to the Department of Financial Services for permission to write off the account as uncollectible.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of the water and wastewater facilities of Loch Harbour Utilities, Inc., to Marion County is acknowledged effective November 30, 2005. It is further

ORDERED that Certificate Nos. 356-W and 312-S shall be canceled. It is further

ORDERED that our staff shall proceed to seek approval from the Florida Department of Financial Services to write off the uncollected 2005 regulatory assessment fees, fines, and penalties as uncollectible. It is further

ORDERED that with our acknowledgement of the transfer to Marion County, Docket No. 090304-WS, the abandonment docket, is effectively moot. It is further

ORDERED that upon referral of the unpaid 2005 regulatory assessment fees, penalties, and interest to the Department of Financial Services regarding authority to write off the account as uncollectible, these dockets shall be closed administratively.

By ORDER of the Florida Public Service Commission this 25th day of March, 2010.



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ANN COLE  
Commission Clerk

( S E A L )

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.