

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: November 17, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Johnson)
Office of the General Counsel (Fleming)

RE: Docket No. 090489-WS – Ordinance by Board of County Commissioners of Hardee County relating to regulation of privately owned water and sewer utilities within the unincorporated areas of Hardee County.

AGENDA: 12/01/09 – 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\090489.RCM.DOC

Case Background

On October 22, 2009, the Board of County Commissioners of Hardee County passed and adopted Ordinance No. 2010-02, declaring the privately-owned water and wastewater facilities in Hardee County to be subject to the provisions of Chapter 367, Florida Statutes (F.S.). The effective date of the Ordinance was to be the date the Ordinance was filed with the Florida Public Service Commission (Commission). Therefore, the effective date of the transfer of jurisdiction is October 26, 2009. This recommendation addresses the acknowledgement of that Ordinance. The Commission has jurisdiction pursuant to Section 367.171, F.S.

DOCUMENT NUMBER-DATE
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Discussion of Issues

Issue 1: Should the Commission acknowledge Ordinance No. 2010-02 by the Board of County Commissioners of Hardee County which transfers jurisdiction over the County's privately-owned water and wastewater utilities to the Commission?

Recommendation: Yes. The Commission should acknowledge Ordinance No. 2010-02 by the County Commissioners of Hardee County, effective October 26, 2009. All non-exempt, privately-owned water and wastewater utilities in Hardee County should be directed to comply with the provisions of Chapter 367, F.S. (Johnson, Fleming)

Staff Analysis: Pursuant to Section 367.171(1), F.S., the provisions of the Chapter become effective in a county upon the adoption of a resolution or ordinance by the board of county commissioners declaring the county subject to the provision of the Chapter. Any board of county commissioners which adopts such a resolution or ordinance is required to immediately notify the Commission of its adoption and submit the resolution or ordinance to the Commission.

On October 22, 2009, the Board of County Commissioners of Hardee County passed Ordinance No. 2010-02, with the effective date to be the date of its filing with the Commission. Therefore, the effective date of Ordinance No. 2010-02 is October 26, 2009.

Pursuant to Section 367.171(2)(a), F.S., each privately-owned and operated utility in Hardee County is required to register with the Commission within thirty (30) days of the date the Commission received jurisdiction, or by November 25, 2009. All utilities must obtain either a certificate of authorization from the Commission, pursuant to Section 367.031, F.S., or must be exempt from Commission regulation.

Pursuant to Section 367.171(2)(b), F.S., each utility engaged in the operation or construction of a system is entitled to receive a grandfather certificate for the area served by the utility on the day the Chapter becomes applicable to it. Within 90 days after the day the Chapter becomes applicable to it, the utility is required to make application for a grandfather certificate by filing an application with the commission. In addition, since it is subject to the Chapter, each utility must continue to collect the rates and charges for water and wastewater service which were being collected on October 26, 2009, until changed by the commission.

Staff has contacted the County Administrator for a list of the privately-owned water and wastewater utilities which were regulated by Hardee County on October 26, 2009, along with available information on each utility's current rates, charges, and territory served. Staff has also contacted the Florida Department of Environment Protection (FDEP) to advise it of the Ordinance, and to obtain a list of all privately-owned water and wastewater facilities in Hardee which FDEP monitors for environmental compliance. The utilities identified by the County and FDEP will receive a letter from Commission staff advising them of the transfer of jurisdiction and providing them with information to determine whether or not they are exempt from Commission regulation pursuant to Section 367.022, F.S.

Entities which are not exempt from Commission regulation will receive instruction for filing an application for grandfather certificates. The resulting applications will be processed in

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individual dockets. These applicants will also be advised of their responsibility to file an annual report for 2009, pursuant to Rule 25-30.110, Florida Administrative Code (F.A.C.), as well as their responsibility to remit annual regulatory assessment fees (RAFs) from October 26 through December 31, 2009, pursuant to Rule 25-30.120, F.A.C. The applicants will also be advised of their right to file for a pass-through of RAFs, should they not be currently collecting RAFs, or if they are collecting a lesser amount than they would be paying to the Commission.

Staff recommends that the Commission acknowledge Ordinance No. 2010-02 by the County Commissioners of Hardee County, effective October 26, 2009. All non-exempt, privately-owned water and wastewater utilities in Hardee County should be directed to comply with the provisions of Chapter 367, F.S.

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Issue 2: Should this docket be closed?

Recommendation: Yes. Since there are no pending issues in this docket, the docket should be closed upon the issuance of a final order. (Fleming)

Staff Analysis: Since there are no pending issues in this docket, the docket should be closed upon the issuance of a final order.