



# Public Service Commission

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

RECORDS AND REPORTING

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**DATE:** SEPTEMBER 24, 1998

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF WATER AND WASTEWATER (CLAPP) *SSM*  
DIVISION OF LEGAL SERVICES (MCRAE) *SM*

**RE:** DOCKET NO. 980972-WS - APPLICATION FOR TRANSFER OF WATER AND WASTEWATER FACILITIES OF HYDRATECH UTILITIES, INC. TO TOWN OF JUPITER ISLAND IN MARTIN COUNTY, AND REQUEST FOR CANCELLATION OF CERTIFICATES NOS. 337-W AND 292-S. COUNTY: MARTIN

**AGENDA:** OCTOBER 6, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\WAW\WP\980972WS.RCM

### CASE BACKGROUND

Hydratech Utilities, Inc., (Hydratech or utility) is a Class A utility located in Martin County which was granted Certificate Nos. 337-W and 292-S. The utility serves approximately 5,319 residential and 200 commercial water customers and approximately 4,454 residential and 240 commercial wastewater customers. According to the most recent information available, Hydratech's 1997 annual report filed with this Commission, the utility had annual operating revenue of \$2,501,357 and a net loss of \$260,802.

On August 3, 1998, Hydratech filed an application with this Commission for transfer of water and wastewater facilities to the Town of Jupiter Island (Jupiter Island or the Town) pursuant to Section 367.071(4)(a), Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. Included with the application was a copy of Resolution No. 378 in which Jupiter Island approved the

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agreement to purchase Hydratech. A subsequent letter, dated August 27, 1998, from Hydratech's representative stated that the closing had been scheduled for September 2, 1998. The sale did close on September 2, 1998.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should Hydratech Utilities, Inc., be ordered to show cause, in writing within 21 days, why it should not be fined for violation of Section 367.071, Florida Statutes?

**RECOMMENDATION:** No. A show cause proceeding should not be initiated. (MCRAE)

**STAFF ANALYSIS:** As stated in the case background, Hydratech closed on the sale of its facilities to Jupiter Island on September 2, 1998, prior to obtaining Commission approval for the sale. Section 367.071(1), Florida Statutes, requires that:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof..., without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest...

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes.

Hydratech appears to have violated Section 367.071(1), Florida Statutes, by failing to obtain the approval of the Commission prior to selling its facilities to Jupiter Island. While staff has no reason to believe that the utility intended to violate this statute, its act was "willful" in the sense intended by Section 367.161, Florida Statutes. See Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL. Utilities are charged with the

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knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Hydratech's failure to obtain Commission approval prior to closing on the sale of its facilities to Jupiter Island is an apparent violation of Section 367.071(1), Florida Statutes. There are, however, circumstances which appear to mitigate the utility's apparent violation. On September 9, 1998, staff counsel called Hydratech's counsel and confirmed that Jupiter Island scheduled the sale closing date for September 2, 1998. Hydratech's counsel stated that this closing date was chosen by Jupiter Island to take advantage of low interest rates on bonds used to finance the purchase of Hydratech.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, staff does not believe that the violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Hydratech to show cause for failing to obtain Commission approval prior to closing on the sale of its facilities to Jupiter Island.

**ISSUE 2:** Should the Commission acknowledge the transfer of Hydratech Utilities, Inc., to the Town of Jupiter Island and cancel Certificate Nos. 337-W and 292-S?

**RECOMMENDATION:** Yes. The Commission should acknowledge the transfer of Hydratech Utilities, Inc., to the Town of Jupiter Island and cancel Certificate Nos. 337-W and 292-S. (CLAPP)

**STAFF ANALYSIS:** Hydratech Utilities, Inc., (Hydratech or utility) is a Class A utility located in Martin County which was granted Certificates Nos. 337-W and 292-S. The utility serves approximately 5,319 residential and 200 commercial water customers and approximately 4,454 residential and 240 commercial wastewater customers. According to the most recent information available, Hydratech's 1997 annual report filed with this Commission, the utility had annual operating revenue of \$2,501,357 and a net loss of \$260,802.

On August 3, 1998, Hydratech filed an application with this Commission for transfer of water and wastewater facilities to the Town of Jupiter Island pursuant to Rule 25-30.037(4), Florida Administrative Code. Included with the application were Resolution No. 378 from the Town of Jupiter Island, which among other things approved the transfer agreement between the Town and Hydratech, and a copy of the transfer agreement between the two parties. The application gives the proposed closing date as on or before September 15, 1998. A subsequent letter, dated August 27, 1998, from Hydratech's representative stated that the closing had been scheduled for September 2, 1998. The sale did close on September 2, 1998.

Pursuant to Rule 25-30.037(4)(d), Florida Administrative Code, the application for transfer included a statement that Hydratech will retain no assets that would constitute a system providing or proposing to provide water or wastewater service to the public for compensation. The application also contained a statement that Jupiter Island obtained Hydratech's most recently available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction pursuant to Rule 25-30.037(4)(e), Florida Administrative Code.

A statement that the customer deposits and interest thereon will be given to the Town of Jupiter Island as required in Rule 25-30.037(4)(g), Florida Administrative Code, was included in both the application and the transfer agreement.

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Pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, a statement was included that Hydratech will pay all outstanding regulatory assessment fees (RAFs) and file the final Regulatory Assessment Fee Return within the time period required by the rules. The forms for payment of the 1998 RAFs were mailed to the utility's agent on August 28, 1998.

Staff recommends that the application is in compliance with all provisions of Rule 25-30.037, Florida Administrative Code. Pursuant to Section 367.071(4)(a), Florida Statutes, the transfer of facilities, in whole or part, to a governmental authority shall be approved as a matter of right. Therefore, staff recommends that the Commission acknowledge the transfer of Hydratech to the Town of Jupiter Island. Because Jupiter Island is now providing services, pursuant to Section 367.022(2), Florida Statutes (governmental authority exemption), Water Certificate No. 337-W and Wastewater Certificate No. 292-S should be canceled.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. No further action is required and this docket should be closed. (MCRAE)

STAFF ANALYSIS: No further action is required in this docket, and this docket should be closed.