

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: July 19, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Brady, Kaproth)
Office of the General Counsel (Gervasi)

RE: Docket No. 070345-WS – Ordinance of the Board of County Commissioners of Columbia County to regulate private water, wastewater, and effluent reuse utilities in Columbia County.
County: Columbia

AGENDA: 07/31/07 – 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\070345.RCM.DOC

Case Background

On May 21, 1981, the Board of County Commissioners of Columbia County (Columbia County) adopted a resolution declaring Columbia County subject to the provisions of Chapter 367, Florida Statutes. This resolution invoked Commission jurisdiction over investor-owned water and wastewater utilities in Columbia County. The Commission acknowledged the resolution by Order No. 10191, issued August 7, 1981, in Docket No. 5818-WS, In re: Resolution passing water and sewer regulation in Columbia County, Florida, to Public Service Commission.

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On May 3, 2007, Columbia County adopted Ordinance No. 2007-15 (Ordinance), which specifies its power and authority under Section 367.171, Florida Statutes, to regulate private water, wastewater and effluent reuse facilities doing business in the County. The effective date of the Ordinance is May 11, 2007, which is the date it was filed with the Florida Department of State. Therefore, Commission jurisdiction over private water, wastewater, and reuse facilities in Columbia County was rescinded effective May 11, 2007.

This recommendation acknowledges the rescinding of Commission jurisdiction in Columbia County and the resulting cancellation of utility certificates in Columbia County. This recommendation also addresses Gator Utilities' request for waiver of its 2005 annual report penalties. The Commission has jurisdiction pursuant to Sections 367.120, 367.145, 367.161, and 367.171, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission acknowledge Columbia County’s Ordinance No. 2007-15, which specifies its power and authority under Section 367.171, Florida Statutes, to regulate private water, wastewater and effluent reuse facilities within the County?

Recommendation: Yes, Columbia County’s Ordinance should be acknowledged as rescinding Commission jurisdiction in Columbia County effective May 11, 2007. Certificate No. 581-W held by C.S.M. Enterprises, Inc.; Certificate No. 392-W held by College Manor Water Company, Inc.; Certificate No. 393-W held by Consolidated Water Works, Inc.; Certificate No. 402-W held by Gator Utilities; Certificate No. 501-S held by Kirby D. Morgan, Inc.; and Certificate No. 391-W held by Lenvil H. Dicks should be cancelled effective May 11, 2007. The cancellation of these certificates does not affect the authority of the Commission to collect, nor the obligation of these utilities to pay, regulatory assessment fees, penalties, and interest accrued prior to the May 11, 2007, transfer of jurisdiction to Columbia County. These utilities will be responsible for final payment of RAFs for the period of January 1, through May 11, 2007, on or before the prescribed due date of March 31, 2008. These utilities will not be responsible for filing an annual report for 2007. (Brady, Kaproth, Gervasi)

Staff Analysis: As stated in the case background, on May 21, 1981, Columbia County adopted a resolution declaring the County subject to the provisions of Chapter 367, Florida Statutes. This resolution invoked Commission jurisdiction over investor-owned water and wastewater utilities in Columbia County. On May 3, 2007, Columbia County adopted Ordinance No. 2007-15, which specifies its power and authority under Section 367.171, Florida Statutes, to regulate private water, wastewater and effluent reuse facilities doing business in the County. The effective date of the Ordinance is May 11, 2007, which is the date it was filed with the Florida Department of State.

Section 367.171(1), Florida Statutes, provides that a County, after ten continuous years under Commission jurisdiction, may by resolution or ordinance rescind said jurisdiction and thereby exclude itself from the provisions of Chapter 367, Florida Statutes, with the exception of Section 367.171, Florida Statutes. Columbia County has met that requirement. Therefore, staff recommends that the Commission acknowledge Columbia County’s Ordinance 2007-15, which is intended to rescind Commission jurisdiction in Columbia County effective May 11, 2007.

The following six utilities currently hold certificates of authorization from the Commission to provide water or wastewater service in Columbia County:

Utility	Certificate Number
C.S.M. Enterprises, Inc.	581-W
College Manor Water Company, Inc.	392-W
Consolidated Water Works, Inc.	393-W
Gator Utilities	402-W
Kirby D. Morgan, Inc.	501-S
Lenvil H. Dicks	391-W

Pursuant to Section 367.171(5), Florida Statutes, when a utility becomes subject to regulation by a County, all cases in which the utility is a party then pending before the Commission shall remain within the jurisdiction of the Commission until disposed of in accordance with the law in effect on the day such case was filed. At the time of the enactment of Columbia County's Ordinance, there were no cases pending for any Commission regulated utilities in Columbia County.¹ Therefore, the certificates for the utilities, as listed above, should be cancelled effective May 11, 2007.

Pursuant to Section 367.145(1)(a), Florida Statutes, and Rule 25-30.120(2), Florida Administrative Code, cancellation of these certificates does not affect the authority of the Commission to collect, nor the obligation of the utilities to pay, regulatory assessment fees, penalties, and interest accrued prior to May 11, 2007. However, pursuant to Rule 25-30.110(3), Florida Administrative Code, these utilities will not be responsible for an annual report for 2007, as they would not be jurisdictional as of December 31, 2007.

C.S.M. Enterprises, Inc.; College Manor Water Company, Inc.; Consolidated Water Works, Inc.; Gator Utilities; Kirby D. Morgan, Inc.; and Lenvil H. Dicks have paid their 2006 Regulatory Assessment Fees (RAFs) for the period of January 1, through December 31, 2006, and have paid their RAFs for all previous years. These utilities will be responsible for final payment of RAFs for the period of January 1, through May 11, 2007, on or before the prescribed due date of March 31, 2008.

C.S.M. Enterprises, Inc.; College Manor Water Company, Inc.; Consolidated Water Works, Inc.; Gator Utilities; Kirby D. Morgan, Inc.; and Lenvil H. Dicks have filed their 2006 annual reports and have filed their annual reports for all previous years. Gator Utilities filed its 2005 annual report late and has requested a waiver of the \$1,215 fine. The requested waiver is addressed in Issue 2.

Based upon the above, staff recommends that the Commission acknowledge Columbia County's Ordinance No. 2007-15 rescinding Commission jurisdiction in Columbia County effective May 11, 2007. Certificate No. 581-W held by C.S.M. Enterprises, Inc.; Certificate No. 392-W held by College Manor Water Company, Inc.; Certificate No. 393-W held by Consolidated Water Works, Inc.; Certificate No. 402-W held by Gator Utilities; Certificate No. 501-S held by Kirby D. Morgan, Inc.; and Certificate No. 391-W held by Lenvil H. Dicks should be cancelled effective May 11, 2007. The cancellation of these certificates does not affect the authority of the Commission to collect, nor the obligation of these utilities to pay, regulatory assessment fees, penalties, and interest accrued prior to the May 11, 2007, transfer of jurisdiction to Columbia County. These utilities will be responsible for final payment of RAFs for the period of January 1, through May 11, 2007, on or before the prescribed due date of March 31, 2008. These utilities will not be responsible for filing an annual report for 2007.

¹ On May 17, 2007, subsequent to the Columbia County Board rescinding Commission jurisdiction on May 11, 2007, a joint application for transfer of Lenvil H. Dicks water facility to City of Lake City and cancellation of Certificate No. 391-W was filed in Docket No. 070319-WU. On June 7, 2007, the Columbia County Board approved the transfer by Resolution No. 2007R-15. On June 27, 2007, the application in Docket No. 070319-WU was voluntarily withdrawn as moot and the docket administratively closed.

Issue 2: Should the Commission grant Gator Utilities' request for waiver of its 2005 annual report penalties?

Recommendation: Yes. Because the utility has demonstrated good cause for noncompliance, the penalty set out in Rule 25-30.110(7), F.A.C., should not be assessed. (Kaproth, Gervasi)

Staff Analysis: Rule 25-30.110(3), F.A.C., requires utilities subject to the Commission's jurisdiction as of December 31st of any year to file an annual report for that year. The report is due by March 31st for the preceding year ending December 31st. Gator filed its 2005 Annual Report on June 18, 2007. Based on Rule 25-30.110(7)(b), F.A.C., the standard penalty for a Class C utility is \$1,215 (405 days x \$3.00 = \$1,215). The fine was calculated from March 31, 2006 through May 11, 2007, which is the effective date of Columbia County's jurisdiction. The utility indicates that there is good cause for the noncompliance and states that the requested waiver relates solely to the penalties associated with the 2005 Annual Report.

In a written request, Mr. Espenship, President, stated that the utility depended on his independent CPA, Gary Shields, for assistance in compiling its annual reports. Mr. Shields' wife was killed in an automobile accident in the summer of 2005 and he was struggling to deal with the emotional stress of that incident during 2006. In December 2006, Mr. Shields died from a sudden illness.

Because of these events, the utility engaged Richard E. Parker, CPA, to prepare the Company's 2006 income tax return and compile the 2006 Annual Report. While compiling the 2006 information, the utility became aware the 2005 report was never completed. It took some time to recover the information relating to water use so that the report could be completed.

Rule 25-30.110(6)(c), F.A.C., states that a utility shall be subject to the penalties imposed herein unless the utility demonstrates good cause for the noncompliance. Further, the Commission may, in its discretion, impose penalties for noncompliance that are greater or lesser than provided therein. Staff believes that Mr. Espenship has shown good cause as to why the 2005 Annual Report was not filed timely. Therefore, staff recommends that the Commission grant the utility's request that the \$1,215 penalty not be assessed.

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Issue 3: Should this docket be closed?

Recommendation: Yes. Since there are no pending matters, the docket should be closed upon the issuance of the order. (Gervasi)

Staff Analysis: Since there are no pending matters, the docket should be closed upon the issuance of the order.