

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of)	DOCKET NO. 890313-WS
of majority organizational control)	
of HARBOUR OAKS UTILITIES, INC.'s)	ORDER NO. 21523
Certificates 310-W and 258-S in)	
Osceola County from Richard Sane to)	ISSUED: 7-10-89
Charles W. Keller.)	

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, CHAIRMAN
 THOMAS M. BEARD
 JOHN T. HERNDON

ORDER DISMISSING PROTEST AND FORMAL COMPLAINT
 AND DECLARING PAA ORDER TO BE FINAL ORDER

BY THE COMMISSION:

BACKGROUND

In 1981, Mr. and Mrs. Alonzo J. Logan installed a 2-inch water line allegedly encroaching on 30 inches of a lot owned by Mr. and Mrs. Arthur D. Alston in Osceola County. Subsequently, a tap was made on the Logan's line without their permission by an unknown party to provide water service to the Alston's and another neighbor, Mr. and Mrs. William Boyd.

In April, 1986, the Logans sued the Alstons and the Boyds for declaratory relief requesting that the court determine the rights of the parties, and for injunctive relief preventing the Alstons from removing the water line from the Alston's property, which would effectively leave the Boyds and the Logans without water. On April 24, 1986, the Circuit Court of Osceola County issued the requested injunction and the Alstons were prohibited from removing the water line until further Order from the Court. In August, 1986, the Alstons filed a separate lawsuit against Harbour Oaks Utilities, Inc. alleging the inverse condemnation of their property by the utility.

On February 6, 1987, in Docket No. 870211-WU, the Alstons filed a formal complaint with the Commission against Harbour Oaks Utilities, Inc. alleging that the utility refused to provide the Alstons with water service from the disputed water line. The Commission, in its Order No. 17816, issued July 7,

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1987, dismissed Mr. Alston's complaint without prejudice, finding that the complaint was premature in light of the pending Court cases.

In February, 1988, the Circuit Court of Osceola County issued an Order which consolidated the Logan's and Alston's lawsuits, and added the Florida Public Service Commission as a party defendant. On April 3, 1989, the Commission filed a motion with the Osceola County Circuit Court to have the February, 1988 Order adding the Commission as a party defendant set aside. The Circuit Court, in a hearing held on April 6, 1989, acknowledged that the Commission was not a proper party to the pending litigation, and ordered that the Commission be dropped as a party defendant.

On February 28, 1989, an application was filed with the Commission requesting the transfer of majority organizational control, and the certificate, of Harbour Oaks Utilities, Inc. from Richard Sane to Charles Keller by the transfer of 75 percent of Harbour Oaks' stock to Mr. Keller.

On March 16, 1989, the Commission received a timely formal objection to the proposed transfer from Arthur Alston. The objection alleged, among other things, that the application of the transferee, Charles W. Keller, was "inadequate, deficient, or fails to demonstrate Charles W. Keller's ability to successfully operate the utility".

At the April 18, 1989 agenda conference, the Commission dismissed Mr. Alston's objection to the proposed transfer and issued its proposed agency action Order No. 21227 on May 11, 1989, quoted in pertinent part as follows:

We find that Mr. Alston's arguments are without foundation. Our evaluation of Mr. Keller's technical and financial resources indicates that he has sufficient resources to operate the utility satisfactorily. If it is subsequently determined that the quality and quantity of service being provided by the transferee becomes inadequate or deficient, the Commission could direct the transferee to correct such deficiencies, or take other appropriate action. Based on the foregoing, we dismiss the formal objection filed herein by Arthur D. Alston for lack of substance.

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Subsequently, on May 30, 1989, Arthur Alston filed two (2) additional "formal complaints" with the Commission. One of the complaints alleged that Mr. Alston was denied due process in that he never received notice of the April 18, 1989 agenda conference in which his objection to the transfer was considered. Mr. Alston's second "formal complaint" was processed as a protest to our proposed agency action Order No. 21227, issued May 11, 1989, because the complaint was directed at the transfer of the utility, and such complaint was received during the protest period.

FIRST COMPLAINT

In regards to Mr. Alston's first complaint, his name was inadvertently and erroneously omitted from the mailing list for this particular docket. Consequently, Mr. Alston was never notified of the April 18, 1989 agenda conference at which we considered the proposed transfer of seventy-five percent of the Harbour Oaks Utilities' stock from Richard Sane to Charles Keller. Nevertheless, Mr. Alston was afforded an opportunity to appear before the Commission at the June 27, 1989 agenda conference and voice his concerns about the proposed transfer prior to the Commission's final vote on the matter. Thus, any denial of due process which Mr. Alston believes he may have suffered was remedied by his opportunity to be heard at the June 27, 1989 agenda conference. Accordingly, we find that Mr. Alston's first complaint should be dismissed without further action by this Commission.

SECOND COMPLAINT

As stated above, Mr. Alston's second complaint filed on May 30, 1989 was processed as a protest to our proposed agency action Order No. 21227, issued May 11, 1989, because the complaint was received during the protest period, and such was directed at the above-discussed transfer of stock.

Mr. Alston's second "formal complaint" realleged all previous allegations advanced by Mr. Alston in his 1987 complaint discussed above. The second complaint further alleged that the utility misled and misrepresented facts to the Commission during the processing of his 1987 complaint. Specifically, Mr. Alston alleged that during the 1987 proceedings the utility denied ownership of the water line

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which is allegedly illegally encroaching on Mr. Alston's property, when in fact, the utility was claiming ownership of the subject line as evidenced by an "as-built" drawing of the utility's water system submitted to Department of Environmental Regulation in January, 1985, by the utility.

We do not agree with Mr. Alston's contention that the "as-built" drawings referred to above "clearly show" that the utility "owned and controlled" the subject water line at the time of the 1987 complaint proceedings. Such "as-built" drawings are normally for engineering and other related purposes, and are not intended to demonstrate ownership and control of a particular water line. Nevertheless, the question of the ownership and control of the water line allegedly encroaching on Mr. Alston's property remains a question of fact and law which is presently pending before the Circuit Court of Osceola County between Mr. Alston, the utility, and others. Mr. Alston has been previously advised by this Commission that the proper forum for a determination of the ownership and control of the contested water line lies in the Circuit Court, and not with this Commission. Accordingly, we find that Mr. Alston's second complaint should be dismissed without further action by this Commission.

REVIVAL OF PAA ORDER

Upon due consideration of the above, we find that our proposed agency action Order No. 21227, issued May 11, 1989, should be revived and declared to be a Final Order of this Commission.

It is, therefore,

ORDERED by the Florida Public Service Commission that the protest and formal complaint filed by Arthur D. Alston on May 30, 1989, are hereby dismissed. It is further

ORDERED that our proposed agency action Order No. 21227, issued May 11, 1989, is hereby revived and declared to be a Final Order of this Commission. It is further

ORDERED that this docket be closed.

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By ORDER of the Florida Public Service Commission
this 10th day of JULY, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

JRF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 a review by the First District Court of Appeal by filing a notice of appeal with the Director, Division of Records and Reporting 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.