

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

January 19, 1989

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF WATER AND SEWER (VANDIVER, CHAPDELAIN, *W. M.*
KRAYNAK, WALDEN) *JK*
DIVISION OF LEGAL SERVICES (MUSZYNSKI) *(read) KM*

RE : UTILITY : SEACOAST UTILITIES
COUNTY : PALM BEACH
DOCKET NO : ~~88000-16~~
CASE : APPLICATION FOR TRANSFER OF CERTIFICATE

AGENDA : JANUARY 31, 1989 - CONTROVERSIAL - PROPOSED AGENCY ACTION -
PARTIES MAY PARTICIPATE

PANEL : FULL COMMISSION

CRITICAL DATES: NONE

DOCUMENT NUMBER-DATE

00632 JAN 19 1989

FPSC-RECORDS/REPORTING

DOCKET NO. 880830-WS
JANUARY 19, 1989

ISSUE AND RECOMMENDATION SUMMARY

ISSUE 1: Should the utility's request for withdrawal of its application be granted?

RECOMMENDATION: Yes, the request should be granted. (VANDIVER)

ISSUE 2: Should the Commission refund the filing fee?

RECOMMENDATION: No, the filing fee should not be refunded. (VANDIVER)

ISSUE 3: Should the docket be closed?

RECOMMENDATION: Yes. No further action is necessary and the docket should be closed. (VANDIVER)

CASE BACKGROUND

Seacoast Utilities is an operating division of the John D. and Catherine T. MacArthur Foundation (the Foundation) and the holder of utility Certificates Nos. 29-W and 29-S in Palm Beach County. In June, 1988 Seacoast Utilities published notice pursuant to Section 367.071, Florida Statutes (1987), and Rule 25-30.030, Florida Administrative Code, of its intent to apply for a transfer of those certificates.

Five local governments (Palm Beach County, the City of Palm Beach Gardens, the Town of Lake Park, the Town of Juno Beach, and the Village of North Palm Beach; collectively referred to here as the intervenors) established themselves as parties objecting to the transfer. The joint transfer application by Seacoast Utilities and its purchaser was therefore set for administrative hearing on September 28 and 29, 1988.

A Prehearing Procedure Order (Order No. 19618) was entered establishing the prehearing schedule and obligations of the parties. Discovery began and proceeded for a time, but then stalled due to disagreements between the applicants and the intervenors over the scope of discovery. The applicants then filed a motion to limit discovery, and the intervenors soon afterwards filed motions to compel the production of documents and witnesses, to stay the closing of the sale, and to dismiss or abate the transfer application.

Meanwhile, the five intervenors formed, by interlocal agreement, the Seacoast Utility Authority (the Authority) for the purpose of acquiring Seacoast Utilities. On September 12, 1988, the authority, filed a Petition for Condemnation of Seacoast Utilities in Circuit Court in Palm Beach County.

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On September 14, 1988, the Prehearing Officer in this docket granted the intervenor's Motion for Continuance of the hearing and continuance of the prehearing obligations of the parties. (Order No. 20034, issued September 20, 1988). The prehearing conference scheduled for September 19, 1988, was however, retained for the purposes of hearing the pending discovery motions and discussion of the status for the case in light of the eminent domain action by the intervenors.

On September 15, 1988, the day after the motion for continuance was granted, the Circuit Court in Palm Beach County entered a temporary injunction in the eminent domain action. The injunction prohibited the Foundation, its principal officers, and the intended purchaser of Seacoast Utilities from closing the sale or entering into any new sales contract. It also prohibited them from further proceedings on this application. The Commission was not directly enjoined.

In light of that injunction, the Prehearing Officer issued Order No. 20120 which ordered that Seacoast Utilities be stayed from closing any other sales contract which requires Commission approval, which does not include a condemnation or negotiated sale to a governmental entity. The order further stated that all discovery and other proceedings in the docket be stayed and that a status conference be held on December 5, 1988.

At the status conference on December 5, 1988, the utility stated that the Circuit Court injunction had been extended until February 6, 1989.

On December 13, 1988, Seacoast Utilities filed a Notice of Withdrawal of Application for Approval of Transfer and Request for Refund of Filing Fee.

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DISCUSSION OF ISSUE

ISSUE 1: Should the utility's request for withdrawal of its application be granted?

RECOMMENDATION: Yes, the request should be granted. (VANDIVER)

STAFF ANALYSIS: On December 13, 1988, Seacoast Utilities filed a Notice of Withdrawal of Application for Approval of Transfer of Certificates Nos. 29-W and 29-S in Palm Beach County. This notice stated that "due to certain conditions and occurrences beyond the control of Seacoast, Seacoast anticipates that the transfer of Seacoast Utilities to Seacoast Acquisition, Inc. will not occur, and accordingly Seacoast herein files its Notice that the application for approval of such transfer be withdrawn so that the Commission may clear its calendar of this matter."

In fact, on December 29, 1988, the John D. and Catherine T. MacArthur Foundation (Foundation) filed with the Commission a Notice of Sale of Assets to a Duly Authorized Governmental Authority. This notice states that the Seacoast Utility Authority, a separate Florida governmental legal entity, was formed for the purpose of acquiring and operating the utility systems of the Foundation, by the City of Palm Beach Gardens, Florida, Palm Beach County, Florida, the Village of North Palm Beach, Florida, the Town of Lake Park, Florida and the Town of Juno Beach, Florida. The Notice further states that the Authority had purchased the water and sewer utility assets. As further information, the Foundation provided that the Authority had filed a suit for condemnation in the Circuit Court of Palm Beach County, Florida and that on December 20, 1988 the court entered its final order of Taking awarding the assets of the Foundation to the Authority. In addition, on December 20, 1988, the Foundation and the Authority consummated the transfer of the assets by

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closing on a certain "Agreement of Settlement of Condemnation Lawsuit" which provided for such things as a purchase price, transfer of customer deposits, assumption by the Authority of the obligation to provide water and sewer utility service throughout the former Seacoast service area, and other things. The Foundation's December 29, 1988 filing has been assigned Docket No. 881605-WS.

Staff recommends that the utility's request to withdraw its application for transfer to Seacoast Acquisition, Inc. be granted. Based on the information filed regarding the sale to the governmental authority, staff agrees that it appears that the original sale will not occur. In addition, there have been no written (or oral) responses from the Intervenors that the application should not be withdrawn. Therefore, staff recommends that the Commission grant the request to withdraw the application.

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ISSUE 2: Should the commission refund the filing fee?

RECOMMENDATION: No, the filing fee should not be refunded. (VANDIVER)

STAFF ANALYSIS: As part of its Notice of Withdrawal, the utility requested that the filing fee of \$4,500 be refunded. The utility stated that "in lieu of the extenuating circumstances necessitating the withdrawal of this application, which circumstances are well known to the Commission and its staff, Seacoast respectfully requests that the Commission refund said fee."

Notwithstanding any extenuating circumstances, staff does not believe that the filing fee should be refunded. The utility submitted an application which was almost seven-inches thick and there were five intervenors as well as numerous customers who objected to the proposed transfer. Staff has spent close to 900 hours working on this case. The staff audit required almost 400 hours to complete and each of the technical and legal staff spent 100 hours reviewing the application, attending depositions preparing interrogatories, conducting a field investigation and generally preparing for the formal hearing initially scheduled for September 28 and 29, 1988.

The utility has not fully explained the extenuating circumstances and why they justify a refund of the filing fee. Commission practice is to refund the filing fee if no significant time and effort has been spent on the case. However, in this case, both the staff and the Prehearing Officer have spent considerable time and effort. Therefore, staff recommends that the filing fee should not be refunded.

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ISSUE 3: Should the docket be closed?

RECOMMENDATION: Yes. No further action is necessary and the docket should be closed. (VANDIVER)

STAFF ANALYSIS: If the application is withdrawn, there is no further action required in this docket. The utility has already filed an application for transfer to a governmental entity which has been assigned Docket No. 881605-MS. As no further action is needed, staff recommends that the docket be closed.

DNV/JEC/JPK/TJM/KM/
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