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August 12, 1996

VIA HAND DELIVERY

Blanca Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Docket No. 96-0695-WS
Clay Utility Company and South Broward Utility, Inc.
Our File: 2080\9311

Dear Ms. Bayo:

Enclosed for filing in the above-captioned docket, please find an original and seven copies of the City of Sunrise's Response to Motion to Dismiss or Strike City of Sunrise's Objection to Clay Utility Company's and South Broward Utility, Inc.'s Joint Application for Transfer of South Broward Utility, Inc.'s Water Certificate No. 359-W, Wastewater Certificate No. 290-S, and Utility Facilities. Please file the original in the docket and distribute the copies in accordance with your standard procedures. If you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,

NASON, GILDAN, YEAGER, GERSON
& WHITE, P.A.

*Alan Haver Brand for Susan
Fleischer Kornspan*
Susan Fleischer Kornspan

Enclosures

cc: John Marks, Esquire (w/enclosure)
Timothy Vaccaro, Esquire (w/enclosure)
James L. Ade, Esquire (w/enclosure)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In Re: Joint Application by
Clay Utility Company and
South Broward Utility, Inc.
for Transfer of Water Certificate
No. 359-W, Wastewater Certificate
No. 290-S, and Utility Facilities
from South Broward Utility, Inc.,
to Clay Utility Company

DOCKET NO. 96-0695-WS
Date Submitted for Filing
August 12, 1996

CITY OF SUNRISE'S RESPONSE TO MOTION TO DISMISS
OR STRIKE CITY OF SUNRISE'S OBJECTION TO
CLAY UTILITY COMPANY'S AND SOUTH BROWARD UTILITY, INC.'S
JOINT APPLICATION FOR TRANSFER OF SOUTH BROWARD UTILITY, INC.'S
WATER CERTIFICATE NO. 359-W, WASTEWATER CERTIFICATE NO. 290-S,
AND UTILITY FACILITIES

The City of Sunrise, Florida ("Sunrise"), by and through its undersigned counsel, hereby responds to South Broward Utility, Inc.'s ("SBU") and Clay Utility Company's ("Clay Utility") Motion to Dismiss or Strike City of Sunrise's Objection to Clay Utility Company's and South Broward Utility, Inc.'s Joint Application for Transfer of South Broward Utility, Inc.'s Joint Application for Transfer of South Broward Utility, Inc.'s Water Certificate No. 359-W, Wastewater Certificate No. 290-S, and Utility Facilities, and states as follows:

1. In this docket, Clay Utility and SBU filed a Joint Application to transfer SBU's water and wastewater certificates and utility facilities from SBU to Clay Utility ("Transfer Application").

2. Sunrise filed an objection to the Transfer Application ("Objection"). In Sunrise's Objection, Sunrise stated that the Florida Public Service Commission ("Commission") must determine and Clay Utility must show that it has the technical ability and

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financial ability to serve the territory ("Encroachment Territory") that is the subject of a pending Application before the Commission, in Docket No. 94-1121-WS.

3. In Clay Utility's and SBU's Motion to Dismiss or Strike Sunrise's Objection, SBU states that "the test for whether the Florida Public Service Commission ("Commission") should grant an application for transfer is set forth in Section 367.071(1), Florida Statutes (1995). The two prongs of the test are as follows: (a) whether the proposed transfer is in the public interest; and (b) whether the transferee "will fulfill the commitments, obligations, and representations of the utility."

4. Thereafter, Clay Utility and SBU argue in their Motion to Dismiss or Strike that Sunrise's Objection inappropriately attempts to add an additional test. However, Clay Utility and SBU could not be more wrong.

5. As stated above, in Sunrise's Objection, Sunrise states that the Commission must determine and Clay Utility must show that it has the technical ability and financial ability to serve the Encroachment Territory. This issue is directly responsive to whether Clay Utility (the transferee) will fulfill the commitments, obligations and representations of the utility, one of the prongs of the test that SBU and Clay Utility agree and admit they must satisfy.

6. Pursuant to the pending Application in Docket No. 94-1121-WS, the water and wastewater certificates, at issue in this docket, are being sought to be amended to add the Encroachment

Territory. As the transferee to those PSC Certificates, Clay Utility must show that it has the ability to serve the Encroachment Territory, i.e., that it will fulfill the commitments, obligations and representations of the utility. Therefore, contrary to Clay Utility's and SBU's Motion to Dismiss or Strike, Sunrise's Objection sets forth appropriate grounds for objecting to an Application for Transfer.

7. Clay Utility's and SBU's remaining arguments in their Motion to Dismiss or Strike pertain to how Sunrise's interests will be or are affected by this Transfer Application. Having participated in Docket No. 94-1121-WS with Sunrise, SBU honestly cannot raise such a meritless argument. Sunrise is an interested party because the Encroachment Territory, that is sought to be added to the PSC certificates that are sought to be transferred to Clay Utility, is inside Sunrise's established water and sewer utility service area, and Sunrise is already providing utility service inside the Encroachment Territory. Certainly a party could not be any more substantially affected by the Transfer Application.

8. Finally, Clay Utility and SBU seek to argue the merits of their Transfer Application and Clay Utility's ability to serve the Encroachment Territory by mere allegations in a motion to dismiss or strike. Obviously, pursuant to the Florida Rules of Civil Procedure and the Commission's practices and procedures, this is not appropriate. The Commission cannot consider or adjudicate the merits, for or against, the Objection on a motion to dismiss.

WHEREFORE, for the foregoing reasons, The City of Sunrise, Florida, respectfully requests the Florida Public Service Commission deny South Broward Utility, Inc.'s and Clay Utility Company's Motion to Dismiss or Strike Sunrise's Objection.

Respectfully submitted,

NASON, GILDAN, YEAGER, GERSON
& WHITE, P.A.
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and

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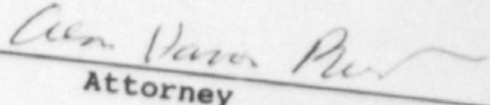
Attorneys for City of Sunrise

By: *John R. Marks, III*
JOHN R. MARKS, III, ESQUIRE
Fla. Bar No. 143026

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing instrument has been furnished by U.S. mail to James L. Ade, Esquire, Attorneys for South Broward Utility, Inc. and Clay Utility Company, Martin, Ade, Birchfield & Mickler, P.A., 3000 Independent Square, P.O. Box 59, Jacksonville, Florida 32201, and Timothy Vaccaro, Esquire, Senior Attorney, Florida Public Service Commission, Legal Department, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850, and by hand delivery to Blanca Bayo, Director, Division of Records and Reporting, Florida Public Service

Commission, 2450 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, this 12th day of August, 1996.



Attorney