

Commissioners:
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J. TERRY DEASON
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DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

December 13, 1999

David H. Simmons, Esquire
Drage, De Beaubien, Knight, et al.
7600 Dr. Phillips Boulevard
Orlando, Florida 32813

Re: Docket No. 991288-WS - Application for transfer of a portion of Certificates 278-W and 225-S in Seminole County from Utilities, Inc. of Florida to the City of Altamonte Springs.

Dear Mr. Simmons:

This letter is in response to your letter, received on November 16, 1999, objecting to the transfer of a portion of Certificates 278-W and 225-S in Seminole County from Utilities, Inc., of Florida (UIF) to the City of Altamonte Springs (City).

On September 2, 1999, UIF filed an application with the Florida Public Service Commission (Commission) requesting the transfer of a portion of the facilities and certificated territory operating under Certificates Nos. 278-W and 225-S from UIF in Seminole County to the City. The application was in compliance with Section 367.071(4), Florida Statutes, and Rule 25-30.037(4)(e), Florida Administrative Code. Accordingly, at the Commission's agenda conference, November 16, 1999, pursuant to Section 367.071(4)(a), Florida Statutes, the Commission approved the transfer as a matter of right. See Order No. PSC-99-2373-FOF-WS, issued December 6, 1999, a copy of the Order is attached for your information.

In your letter, you stated that F.F. South does not wish to have the City put a road through its property and does not want the City to provide water and wastewater services to its property. Road placement is not a matter within this Commission's jurisdiction. Moreover, "an individual has no organic, economic, or political right to service by a particular utility merely because he deems it advantageous to himself." Storey v. Mayo, 217 So.2d 304, 307 (Fla. 1968).

You also stated in your letter that although the transfer to a governmental authority must be approved as a matter of right, the transfer must still be in the public interest. Under Section 367.071(1) Florida Statutes, no utility shall sell, assign, or transfer its . . . facilities . . . without

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FPSC-RECORDS REPORTING


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determination and approval of the commission that the . . . transfer is in the public interest.” However, Section 367.071(4) Florida Statutes, states that the sale of facilities . . . to a governmental authority shall be approved as a matter of right.” Although, the Commission has the duty to determine whether a sale, assignment, or transfer is in the public interest under Section 367.071(1), the Legislature has determined that the sale of facilities to a governmental authority is in the public interest, by requiring the Commission to approve the sale as a matter of right under Section 367.071(4), Florida Statutes. For this reason, the Commission’s decision to grant the transfer was made by final agency action.

Please be advised that the opinions expressed herein are the opinions of the staff of the Division of Legal Services and they in no way bind the Commission.

If I may be of further assistance, you may contact me at (850)413-6236.

Sincerely,


Jason K. Fudge
Staff Attorney

JKF/lw/dr

Enclosure

cc: Division of Water and Wastewater (Johnson, Redemann)
Division of Records and Reporting

I:\991288LT.JKF

DRAGE, DE BEAUBIEN, KNIGHT, SIMMONS, MANTZARIS & NEAL

ATTORNEYS AND COUNSELLORS AT LAW
A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

HUGO H. DE BEAUBIEN
THOMAS B. DRAGE, JR.
T. KEVIN KNIGHT††
DANIEL F. MANTZARIS
D. JOHN MORGESON, JR.
THOMAS F. NEAL
JULIE HIONS O'KANE
DAVID H. SIMMONS†† ‡

MICHAEL R. ANSAY
DARLENE D. BENEKE
ALLETTE-MARIE CHARLES
JENNIFER G. FRANK
DALE T. GOBEL
JULIAN GONZALEZ
P. HAYDEN HASKINS, JR.

†† BOARD CERTIFIED CIVIL TRIAL ATTORNEY

‡ BOARD CERTIFIED BUSINESS LITIGATION ATTORNEY

POST OFFICE BOX 87
332 NORTH MAGNOLIA AVENUE
ORLANDO, FLORIDA 32802-0087
(407) 422-2454
TELEFAX (407) 849-1845

KENNETH P. HAZOURI
PATRICK C. HOWELL
BLAIR T. JACKSON
STEPHEN J. JACOBS
JULIE FINK KAUFMAN
MARIA B. LOPES
RACHAEL E. McMORRIS
HEATHER MORCROFT^o
DANIEL J. O'MALLEY
DANIEL P. OSTERNDORF
MATTHEW D. PARDY
ELIZABETH A. LANHAM-PATRIE
NICOLA A. BOOTHE-PERRY
YVETTE RODRIGUEZ
BEN ROSSI, JR.
ELMER SANCHEZ
LAUREN B. ZIMMERMAN
^oALSO ADMITTED TO OHIO BAR

November 15, 1999

Via Facsimile and Federal Express

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

ORIGINAL

**Re: City of Altamonte Springs/Assignment from Utilities, Inc./
F.F. South & Co. Docket #991288**

Dear Ms. Bayo:

This letter serves to object, on behalf of our client, F.F. South & Co., to the transfer of service in Docket #991288 regarding the Application for transfer of a portion of Certificates 278-W and 225-S in Seminole County from Utilities, Inc., of Florida to the City of Altamonte Springs.

F.F. South has ownership rights to the property (the "Property") serviced by Utilities, Inc., to which this transfer applies and is directly affected by the proposed transfer. Altamonte Springs wishes to build a road through the Property, thus cutting it in two and severely diminishing its value. The Property is not located within the city limits of Altamonte Springs and as such it is not properly subject to condemnation by the City. In order to achieve its goal, Altamonte Springs seeks to find a way to condemn the land.

Because F.F. South does not wish to have Altamonte Springs put a road through its property, and does not wish Altamonte Springs to provide water and wastewater services to its property, F.F. South objects to the transfer of service from Utilities, Inc., to Altamonte Springs. The transfer of water and wastewater services from Utilities, Inc., to Altamonte Springs is not in the public interest and therefore should not be approved.

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Altamonte Springs is using the transfer of water and wastewater services to accomplish its goal of building a road that will cut the Property into two pieces. It is not in the public interest for the City to use the transfer of wastewater services as a means to take F.F. South's Property. It is also not in the public interest for the City to acquire water and wastewater service rights to property located outside the city limits with no legitimate reason for doing so.

Altamonte Springs' wrongful intent in acquiring the wastewater service is evidenced by the purchase price. Altamonte Springs is paying Utilities, Inc., \$427,000 for "one water faucet and one manhole." (Staff Recommendation Report) The Staff Recommendation Report points out that "the purchase price for Green Acres Campground is about 26% of the combined ratebases in Seminole County. Seminole County consists of eleven water systems and five wastewater systems." Obviously, and as the Public Service Commission staff recognized, \$427,000 is an excessive price for one water faucet and one manhole. Altamonte Springs is willing to pay such an exorbitant price in order to accomplish its goal of building a road, outside its city limits, through F. F. South's Property without F.F. South's permission or approval. Therefore, the transfer agreement does not meet the statutory requirement that it be in the public interest.

Altamonte Springs' bad faith is further evidenced by its continued refusal to act in permitting F.F. South to have the service promised it by Utilities, Inc. Such refusal constitutes a breach of contract by the City, as assignee of Utilities, Inc.

Under § 367.071(1), no utility shall sell or transfer its facilities or any portion thereof without determination or approval of the commission that the sale or transfer is in the public interest. § 367.071(1), *Florida Statutes*. Although "The sale of facilities, in whole or part, to a governmental authority shall be approved as a matter of right," the transfer still must be in the public interest. § 367.071(4), *Florida Statutes*. Nothing in Subsection 4 of § 367.071 limits the applicability of Subsection 1; and the Florida Constitution requires that any such transfer be in good faith and in the public interest. Therefore, even if the transfer is to a governmental authority, it still must be in the public interest. In addition, "in the final analysis, the public interest is the ultimate measuring stick to guide the PSC in its decisions." *Gulf Coast Electric Cooperative, Inc. v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999); citing *City of Homestead v. Beard*, 600 So. 2d 450, 453 (Fla. 1992); *Lee county Electric Cooperative v. Marks*, 501 So. 2d 585, 587 (Fla. 1987); and *Utilities Commission of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731, 732 (Fla. 1985).

In *City of Homestead v. Beard*, 600 So. 2d 450 (Fla. 1992), the Court recognized the dangers inherent in a city extending utility service beyond its borders. The Court stated "Unlike the residents of the City, the customers residing outside the municipality lack a voice in the City's political process." *Id.* at 452.

F.F. South, since its Property is not within the city limits of Altamonte Springs, has no voice in Altamonte Springs' political process. F.F. South is limited to challenging Altamonte Springs' action in this forum. The Commission should recognize the inherent dangers in municipalities controlling utilities service beyond their borders. Parties who are not residents of the city can not object to this exercise of power. Non-resident parties can be ignored at the whim of the acting city.

In *Utilities Commission of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985), the Florida Supreme Court reversed the Public Service Commission's decision denying approval of an extra-territorial agreement between a city and an electric company. The Court noted that the Commission should base its approval decision on the effect of the agreement on all affected customers, not just the customers in the transferred area. See *id.* at 732. The Court went on to state that for PSC approval, the agreement "must not harm the public." *Id.* at 733.

The Commission should take into account the harm to all affected customers if the transfer agreement between Utilities, Inc., and Altamonte Springs is approved. Approval of this agreement will harm F.F. South as is already shown. In addition, the agreement harms other customers, in that if it is approved, it will give cities the green light to take private property without a legitimate purpose and without a legitimate procedure. Therefore, the agreement, if approved, will harm all affected customers, not just F.F. South.

For the reasons stated above, F.F. South, the customer directly affected by the agreement, objects to the transfer of water and wastewater services from Utilities, Inc., to Altamonte Springs. The Commission should not approve the transfer agreement.

F.F. South's phone number is (407) 370-9300. The fax number is (407) 370-9400. The address is 7600 Dr. Phillips Boulevard, Orlando, Florida 32813. All communications should be through this law firm.

Sincerely,



DAVID H. SIMMONS

(signed in his absence to avoid delay)

DHS/mhl
cc: Robert Kling

From: Kay Flynn Confid receipt
To:
Jason Fudge, Richard Redemann,
Cheryl Johnson
Subject: 991288

===NOTE=====

We received in today's mail a letter from attorney David Simmons on behalf of F.F. South & Co. objecting to the transfer of a portion of Utilities, Inc.'s certificates in Seminole County to City of Altamonte Springs.

This docket was on today's ag for approval of the transfer.

I will forward copies of the letter to each of you.

Kay
