

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Bayside Mobile Home Park )  
against Bayside Utility Services, Inc. regarding )  
water and sewer service in an area within a )  
territory assigned by the Commission )

DOCKET NO. 010726-WS

DATE: AUGUST 30, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK AND  
ADMINISTRATIVE SERVICES

FROM: BAYSIDE PARTNERSHIP d/b/a BAYSIDE MOBILE HOME PARK

BAYSIDE SECOND RESPONSE TO STAFF'S FIRST DATA REQUEST

Staff has written and stated "In January 2000, Bayside Mobile Home Park began plans.....". This is not correct. Bayside Mobile Home Park (Bayside) began actively planning to develop the remaining portion of the park in 1997 and hired Mr. George Walrond, P.E., on July 13, 1998. Mr. Walrond began the process of doing the engineering to develop the vacant property to complete the development of the park.(see exhibit 1) On July 7, 1999, Mr. Walrond was replaced by Mr. Sean McNeil, P.E. (See exhibit 2) Mr. Walrond had been offered a position with Bay County and Bayside released Mr. Walrond from his contract and replaced him with Mr. McNeil. Mr. McNeil is still aboard today and has completed most of the engineering for the additional 76 lots.

Contrary to the statements made by Utilities, Inc., Bayside had no knowledge of the impact fee request from the City of Panama City Beach (City) until informed by Mr. Salsano, their employee. (See exhibit 5) There is no "mutual resolution" to the impact fee question. Bayside has developed an agreement with the City to eliminate the demand that the \$186,000. be paid up front. Bayside Utility Services, Inc.

(BUSI) was demanding from Bayside that it forward a check to them for the \$186,000 before it would complete any paperwork for the proposed expansion. It has always been and still is the position of Bayside that the impact fees are owed by and should be paid by BUSI. Bayside bases this position entirely on the

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EG 1 + org attachments  
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EC 1 (w/o attachments)  
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H 1. dk + fl (w/o attachments)

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Commission and the fact that in Order No. 18624, dated January 4, 1988, the Commissioners ordered Bayside Utilities, Inc. to pay to the City of Panama City Beach, \$200,000 in impact fees for lots served by Bayside Utilities, Inc. and located within the territory assigned by the Commission to Bayside Utilities, Inc. This territory and lots are now owned and controlled by BUSI. Bayside raises the question as to why would the Commissioners at one point order one Utility Company to pay impact fees to a City, and then at another time, under the same circumstances, issue an order stating just the opposite. That is exactly what Staff is recommending to the Commissioners at this point.

Staff has stated in error that "water supply wells were still in service." Bayside has never had any water supply wells. Bayside has always purchased water from the City of Panama City Beach or Bay County.

Staff seems determined to justify the actions of the Commission in 1988 by indicating that the sewer treatment plant was in terrible shape and Bayside was about to be forced to lose the utility. Nothing is further from the truth. Staff has made written statements that "the plant was in violation," "in desperate need of extensive repairs," etc. Staff has indicated that "The only viable alternatives were to dismantle the wastewater treatment plant and force the utility to borrow funds to pay for interconnection with the City or to institute a certificate revocation proceeding for the compliance failure and turn the utility over to the City." This is a totally inaccurate and terribly wrong information that Staff has developed for the Commissioners to consider and make such vital decisions on. Staff should be made vividly aware that the sewer treatment plant that they so terribly condemn is ALIVE AND WELL, and still operating today. It might be interesting to Staff to know that this terrible plant that they talk about was sold to Sandy Creek Utility Services Inc. This terrible plant is under the jurisdiction of staff and has just been purchased by non-other than Utilities, Inc. and is one of the Utility Systems that is being now sold to NUON Acquisition Sub, Inc. (See exhibit 3). As to problems with DER that staff writes about, the only problem that Bayside had in 1988 with DER concerning the operations of the wastewater treatment system was perc pond problems. To solve the problem, additional ponds needed to be built or the existing ponds needed to be reworked. Bayside looked at the alternatives and cost and elected to negotiate with the city to hook in and once an agreement on price was reached with the City, Bayside began a SARC to accomplish the hookup and at the same time and in the same SARC, Bayside got approval to meter and expand the Water system. In that same SARC, the Commissioners included and approved a \$200,000. payment to the City of Panama City Beach for impact fees on lots in Bayside Park. Bayside was never in a critical situation where "forced abandonment " or loss of the utility system was an option.

BUSI asserts that the expansion was mentioned only after the closing of the sale. Mr. Ben Girtman, Attorney for BUSI did a beautiful job of representing his client in the purchase of Bayside's

Utility Company for Utilities, Inc. He even prepared a nice binder containing all the "original set of closing documents". He forwarded a set to Mr. Carl Wenz of Utilities, Inc. and a set to Dorothy Burton of Bayside and Julian Bennett, Attorney for Bayside.(see exhibit 4) Bayside would ask staff to take particular note of exhibit 4, page 1, item 2. Page 1 is a nice and complete contents page that Mr. Girtman prepared and enclosed with each set of "original closing documents". Line 2 of the contents page says "1998 ANNUAL REPORT TO THE FPSC". Bayside would continue by asking staff to especially take note of exhibit 4 page W-6, item "OTHER WATER SYSTEM INFORMATION", lines 8, 9, 10, and 11. Mr. Carl Wenz, Mr. Rasmussen, and Mr. Salsano all were in possession of this document months before the closing and talked extensively with Jeter and Burton of Bayside about the expansion plans indicated in the annual report. This annual report was gone over by all concerned with a fine tooth comb long before the closing of the sale of the Utility to Utilities, Inc. Are we really being asked to believe that everyone with Utilities, Inc now claim to have no knowledge of any proposed expansion plans by Bayside.

Bayside would ask that Staff review that same contents page prepared by Mr. Girtman and look at item 4, page 2, (1) exhibit 3. It states that "The engineering plans and specifications for the Facilities" was also included in the original documents sent by Mr. Girtman to everyone. These engineering plans was furnished to Utilities, Inc. during the summer of 1998 when they first approached Bayside about acquiring the system. The plans are attached in exhibit 4 and Bayside would ask that Staff look closely at the two words printed above Big Daddy Drive and North of the Marina in the big vacant area. It clearly says "PROPOSED DEVELOPMENT". Are we also to believe that Utilities, Inc., being in possession of these plans for several months prior to the closing, never noticed the words PROPOSED DEVELOPMENT and asked any questions about them.

Bayside's engineer, Mr. McNeil had complained to Jeter on several occasions that he was unable to get any response out of BUSI. On March 1, 2000, Jeter called Salsano with Utilities, Inc. and urged him to begin the expansion. Salsano told Jeter that Utilities, Inc. wasn't doing anything until Bayside sent them \$186,000. Jeter was shocked and this was Bayside's first knowledge that the City of Panama City Beach was asking for impact fees.(see exhibit 5) Jeter asked Salsano to fax a copy of the letter to him and exhibit 5, the letter so shows at the top of the page that this letter was faxed to Bayside by Utilities, Inc. on March 1, 2000. Jeter began immediately to negotiate with the City to see if something could be worked out to eliminate the requirement that the \$186,000. be paid in advance. Jeter was successful in getting the City to agree to accept payment as each lot was sold. It is the position of Bayside that the Commission should order BUSI to collect and pay the impact fees to the City since it ordered this same Utility when it was owned by Bayside to pay to the same City \$200,000. in impact fees in 1988. The situation then is the same as the situation is now. The City simply is requiring a certain amount of impact fee for each lot as it did in 1988.

Staff has concluded and written, “....and the remaining portion became known as Bayside Mobile Home Park”.(see exhibit 6). This writing indicates that Staff believes that Bayside Mobile Home Park came into existence because of, and after the sale of Bayside Utilities, Inc. to Utilities, Inc. This is not true. Bayside Mobile Home Park was established in 1972. Bayside Partnership was formed and purchased Bayside Mobile Home Park in 1984. Bayside Utilities, Inc. was formed in 1987 and was a wholly owned subsidiary of Bayside Partnership. Bayside Partnership owned 100% of the stock of Bayside Utilities, Inc. and sold the assets to Utilities, Inc. on June 17, 1999. In anticipation of the purchase of Bayside Utilities, Inc., Utilities, Inc. formed Bayside Utility Services, Inc. on November 6, 1998.

In the past, Staff has attacked the problem of expansion and solved it by way of the Tariff it and the Commission has approved for Bayside Utilities, Inc. BUSI now owns and controls that Tariff. In a Commission document labeled exhibit 7, attached and titled “Docket No. 971401-WS and dated June 25, 1998, Mr. Casey raised the following issue; “should the utility’s wastewater Tariff service availability charges be revised” Staff’s recommendation to this issue was, “**The existing \$300. plant capacity charge should be discontinued, and a main extension charge of \$300. should be initiated for all future customers**”. Also stated was, “**Staff believes that the \$300. main extension charge would allow the Utility to increase its CIAC level**”.

Mr. Davis of Staff wrote on March 10, 1998, the following: (see exhibit 8) “(number of potential customers without expansion)”, “76.55% used and Useful”, and most important he wrote, “**It is anticipated the utility will experience growth in the near future**”.

On July 10, 1998, (see exhibit 9), Staff wrote the following; “**...and a main extension charge of \$300. be initiated for ALL NEW CUSTOMERS**”.

In Order No. PSC-98-1269-FOF-WS (see exhibit 10), the Commissioners approved and stated “**...the plant capacity charge is no longer applicable**”. and “**...as prescribed by rule, we discontinue the \$300. plant capacity fee and approve a \$300. MAIN EXTENSION CHARGE**”.

Staff states on August 23, 2001,(see exhibit 11), “As required by rules 25-30.037 (2) (G), (H), (I), and (K), Florida Administrative Code, the application was accompanied by the Asset Purchase Agreement (Sales Contract) executed on October 7, 1998”. Since BUSI states by way of Mr. Carl Wenz in their response to Staff’s First Data Request, dated July 3, 2001, “During the negotiations, there was no discussion of expansion”. Exhibit 12 clearly proves that statement inaccurate. Page 2 and 3 of exhibit 12 show that the engineering plans were placed in the hands of Utilities, Inc. on October 7, 1998, and clearly indicate “**PROPOSED EXPANSION**”. It is extremely important for Staff to note that on page 4 of the

agreement, (exhibit 12, page 4), Utilities, Inc. clearly agrees **“...to supply ALL CUSTOMERS within the property with adequate and customary sewer utility service”**.

Staff and Mr. Girtman have stated that Rule 25-30.585 Florida Administrative Code, “sets forth service availability charges for a developer”. Rule 25-30.585 appears to set forth rules for determining the service availability charges for Utility Companies. Also the Rule states the service availability charge will not be more than the developers hydraulic share of the total cost of the Utility’s Facilities. Why Staff has tried to use 25-30.585 to determine the service availability fees is unknown. **The amount of the service availability fees are not at issue and are already determined and established to be \$300. per connection by the existing and current Tariff, approved and recommended by Staff and approved by the Commissioners.**

Staff has also written **“Staff believes that the developer’s contention is true in the event that an individual is requesting an extension of service to individual lot”**. That is exactly what will be occurring. **Individual customers will be requesting service to individual lots after they become owners of those lots.**

Rule 25-30.520, Florida Administrative Code states, **“IT IS THE RESPONSIBILITY OF THE UTILITY TO PROVIDE SERVICE WITHIN IT’S CERTIFICATED TERRITORY IN ACCORDANCE WITH TERMS AND CONDITIONS ON FILE WITH THE COMMISSION”**. The area that Bayside is developing is within the Utility’s **“CERTIFICATED TERRITORY ON FILE WITH THE COMMISSION”**, according to its current Tariff.

Bayside refers Staff to exhibit 13 and ask that Staff please take note of the following;  
Tariff original sheet No. 7.0, paragraph 2.0 **“The Company shall provide to ALL CUSTOMERS REQUIRING SUCH SERVICE WITHIN THE TERRITORY”** described in it’s Certificate....”.

Tariff original sheet No. 8.0 **“EXTENSIONS WILL BE MADE TO THE COMPANY’S FACILITIES IN COMPLIANCE WITH COMMISSION RULES AND ORDERS AND THE COMPANY TARIFF”**.

Tariff Second revised sheet No. 17.0 **“AVAILABLE THROUGHOUT THE AREA SERVED BY THE COMPANY”**.

Tariff original sheet No. 22.0 **“ This charge would be levied for service initiation at a location**

**WHERE SERVICE DID NOT EXIST PREVIOUSLY”.**

**Tariff original sheet No. 30.0 “A MAIN EXTENSION CHARGE OF \$300. IS APPLICABLE”.**

**In exhibit 14, Assistant Director, Mr Bill Lowe, states it as clearly as it possibly can be stated, “ANY LINES RUN FOR THE BENEFIT OF NEW CUSTOMERS WILL BE PAID FOR BY THE NEW CUSTOMERS IN THE FORM OF SERVICE AVAILABILITY FEES”.**

Bayside Submits to Staff and the Commissioners that the following is absolutely true;

- 1) Utilities, Inc. knew from the get-go that the 76 lots were going to be developed.**
- 2) Florida Statutes and the Rules clearly state that the Utility is required to furnish sewer and water service to ALL CUSTOMERS WITHIN THEIR CERTIFICATED TERRITORY.**
- 3) Florida Statutes and the Rules clearly require that new customers will be furnished service by the Utility and the charge will be the stated amount of Service Availability Fees in their Tariff and approved by the Commissioners.**
- 4) The approved amount stated in the current Utility Tariff is \$300. for each connection.**

**Bayside ask that Staff recommend to the Commissioners that the Commissioners should issue an order in this Docket, ordering Bayside Utility Services, Inc (BUSI) to immediately abide by the Statute and the Laws of the State Of Florida, Follow the guidelines set forth in their approved Tariff, and begin at once to expand their system to furnish service to all customers within their certificated territory and that includes the proposed expansion of the final 76 lots of Bayside Mobile Home Park and the Service Availability Fee will be \$300. as required by their Tariff. Bayside Utility Services, Inc. should also be ordered to collect from each customer, as they request service, the required impact fee for the City of Panama City Beach and forward it to the City.**

Response with exhibits by Overnight Fedx To Ms.Blanca Bayo, Director, Division of the Commission Clerk and Administrative Services.

Response pages and copies of exhibits by Telefax to;

Ms. Blanca Bayo, Director Div. Of Commission Clerk and Administrative Services

Mr. E. Leon Jacobs, Chairman, Florida Public Service Commission

Mr. Charles Walker, Staff